

**Public Benefits and Private
Rights: Countervailing
Principles of Eminent Domain**

House Joint Resolution No. 34

Proposed Legislation

Volume II

Legislative Environmental Quality Council
Eminent Domain Subcommittee

Public Benefits and Private Rights: Countervailing Principles of Eminent Domain

Proposed Legislation
September 2000

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PLEASE NOTE:

The bill drafts in this report are in the form in which they were adopted by the Environmental Quality Council at its September 2000 meeting. For the most current versions of these bills, call the Legislative Environmental Policy Office at (406) 444-3742 or view the online version by choosing *Legislative Info* from the State of Montana homepage, then *2001 Session*.

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As of: October 5, 2000 (2:15PM)

LC0161

**** Bill No. ****

Introduced By *****

By Request of the Environmental Quality Council

A Bill for an Act entitled: "An Act limiting the liability of a property owner whose property is taken by eminent domain to instances of negligence or intentional conduct; providing for indemnification for costs and attorney fees for a property owner who is made a party to an action but is not found liable for damages; amending section 75-10-715, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Liability limitation -- defense costs. (1) Subject to subsection (2), a condemnee or a condemnee's successor in interest is not liable for damages that result from the construction, use, or maintenance of a project on property in which the condemnee or the condemnee's successor in interest has an interest.

(2) A condemnee or a condemnee's successor in interest is liable for the portion of damages that results from the construction, use, or maintenance of a project on property in which the condemnee or the condemnee's successor in interest has an interest if the negligence or intentional conduct of the condemnee or the condemnee's successor in interest is a cause of the damages.

(3) If a condemnee or a condemnee's successor in interest is joined in an action for damages that are alleged to result from the construction, use, or maintenance of a project on property in which the condemnee or the condemnee's successor in interest has an interest, the project owner or operator is liable for the costs and attorney fees incurred by the condemnee or the condemnee's successor in interest unless the condemnee or the condemnee's successor in interest is found liable for damages under subsection (2).

Section 2. Section 75-10-715, MCA, is amended to read:

"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions. (1) Except as provided in [section 1] and 75-10-742 through 75-10-752, notwithstanding any other provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or

treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

(5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required;

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership, authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that

the person:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person transported only household refuse, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at

the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of

the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

(e) Subsection (6) does not affect the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

(7) A person has an exclusion and is not liable under this section if:

(a) the person generated or disposed of only household

refuse, unless the person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse;

(b) the person owns or operates real property where hazardous or deleterious substances have come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the person's property, provided that the following conditions are met:

(i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's or operator's property does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

(ii) the person who caused, contributed to, or exacerbated the release or threatened release of any hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department provides a written determination that an existing or proposed contractual relationship is an insufficient basis to establish liability under this section;

(iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or threatened release of a hazardous or deleterious substance; and

(iv) the owner or operator cooperates with the department

and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls;

(c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that the following conditions are met:

(i) the person did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substance through any act or omission;

(ii) the person uses or allows the use of the real property for residential purposes. This exclusion does not apply to any person who acquires or develops real property for commercial use or any use other than residential use.

(iii) at the time the person purchased or occupied the real property, there were no visible indications of contamination on the surface of the real property;

(iv) the person cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls; and

(v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or threatened release of a hazardous or deleterious substance.

(8) A person is liable under this section if the department provides substantial credible evidence that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

(9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701(15)(b) because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to

influence a facility's management of hazardous or deleterious substances;

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease

financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

- (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

- (ii) worsen the contamination at the facility;

- (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

- (iv) engage in conduct described in subsection (11).

(11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

- (a) causes or contributes to a release of hazardous or deleterious substances from the facility;

- (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

- (c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually participates in the management of a facility by:

- (i) exercising decisionmaking control over environmental compliance; or

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(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

{ Internal References to 75-10-715:

75-10-701	75-10-701	75-10-702	75-10-704
75-10-704	75-10-704	75-10-704	75-10-711
75-10-711	75-10-711	75-10-711	75-10-711
75-10-711	75-10-711	75-10-711	75-10-712
75-10-714	75-10-714	75-10-718	75-10-718
75-10-718	75-10-719	75-10-719	75-10-719
75-10-719	75-10-719	75-10-720	75-10-722
75-10-722	75-10-722	75-10-722	75-10-722
75-10-724	75-10-724	75-10-726	75-10-726
75-10-736	75-10-736	75-10-744	75-10-744
75-10-745	75-10-745	75-10-745	75-10-745
75-10-745	75-10-745	75-10-745	75-10-745
75-10-745	75-10-745	75-10-745	75-10-745
75-10-745	75-10-745	75-10-745	75-10-745
75-10-745	75-10-745	75-10-745	75-10-745
75-10-746	75-10-747	75-10-749	75-10-749
75-10-750	75-10-750	75-10-752	75-10-752 }

NEW SECTION. Section 3. {standard} Codification

instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 30, part 3, and the provisions of Title 70, chapter 30, part 3, apply to [section 1].

NEW SECTION. Section 4. {standard} Effective date. [This act] is effective on passage and approval.

- END -

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LC0162

**** Bill No. ****

Introduced By *****

By Request of the Environmental Quality Council

A Bill for an Act entitled: "An Act revising the laws relating to eminent domain for the sole purposes of modernizing the language, including references to the procedure to be followed in eminent domain actions, and specifically enumerating the public uses for which the power of eminent domain may be exercised; and amending sections 7-1-4124, 7-5-4106, 7-7-4404, 7-13-2218, 7-13-4404, 7-13-4405, 7-13-4406, 7-14-101, 7-14-1625, 7-14-2101, 7-14-2108, 7-14-2123, 7-14-2621, 7-14-2803, 7-14-2829, 7-14-4501, 7-14-4622, 7-14-4626, 7-14-4801, 7-15-4204, 7-15-4258, 7-15-4259, 7-15-4460, 7-15-4462, 7-16-2105, 7-16-4106, 7-35-2201, 15-70-301, 15-70-701, 23-1-102, 35-18-106, 35-20-104, 53-2-201, 60-1-103, 60-5-104, 67-2-301, 67-5-202, 67-6-301, 67-10-102, 67-10-103, 67-10-201, 67-10-205, 67-10-221, 67-11-201, 67-11-204, 67-11-231, 67-11-401, 69-13-104, 69-14-513, 69-14-536, 69-14-552, 70-30-102, 70-30-103, 70-30-104, 70-30-105, 70-30-106, 70-30-107, 70-30-108, 70-30-109, 70-30-110, 70-30-111, 70-30-202, 70-30-203, 70-30-206, 70-30-207, 70-30-301, 70-30-302, 70-30-303, 70-30-304, 70-30-305, 70-30-306, 70-30-307, 70-30-308, 70-30-309, 70-30-310, 70-30-311, 70-30-312, 70-30-314, 70-30-315, 70-30-321, 70-30-322, 70-31-102, 70-31-104, 70-31-105, 70-31-301, 70-31-311, 70-32-216, 75-10-715, 75-10-720, 75-15-123, 75-15-223, 76-5-1108, 76-5-1111, 76-6-105, 76-12-108, 76-12-110, 82-2-221, 82-2-222, 82-2-224, 82-10-303, 82-10-304, 82-10-305, 85-1-204, 85-1-209, 85-7-1411, 85-7-1904, 85-7-1932,

85-9-410, and 87-1-209, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4124, MCA, is amended to read:

"7-1-4124. Powers. A municipality with general powers has the power, subject to the provisions of state law, to:

- (1) enact ordinances and resolutions;
- (2) sue and be sued;
- (3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;
- (4) contract with persons, corporations, or any other governmental entity;
- (5) pay debts and expenses;
- (6) borrow money;
- (7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;
- (8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;
- (9) make grants and loans of money, property, and services for public purposes;
- (10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;
- (11) hire, direct, and discharge employees and appoint and

remove members of boards;

(12) ratify any action of the municipality or its officers or employees ~~which~~ that could have been approved in advance;

(13) have a corporate seal and flag;

(14) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property ~~to provide any service or facility~~ for a public use authorized by law;

(15) initiate a civil action to restrain or enjoin violation of an ordinance;

(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;

(17) conduct a census;

(18) conduct inventories of public property and preparatory studies;

(19) condemn and demolish hazardous structures;

(20) purchase insurance and establish self-insurance plans;

(21) impound animals and other private property creating a nuisance or obstructing a street or highway;

(22) establish quarantines;

(23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided in 7-1-4150; and

(24) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions."

{Internal References to 7-1-4124:

7-1-4121* x 7-1-4149*x 7-1-4149*x}

Section 2. Section 7-5-4106, MCA, is amended to read:

"7-5-4106. Power of condemnation. The city or town council ~~has power to~~ may condemn private property for ~~opening,~~ ~~establishing, widening, or altering any street, alley, park,~~ ~~sewer, or waterway in the city or town and for establishing,~~ ~~constructing, and maintaining any sewer, waterway, or drain ditch~~ ~~outside of the corporate limits of the municipality or for any~~ ~~other municipal and public use listed in 70-30-102.~~ The ordinance authorizing the taking of private property for ~~any such~~ a public use is conclusive as to the necessity of the taking and must conform to and ~~the proceedings thereunder had be conducted~~ be conducted as provided in Title 70, chapters 30 and 31, concerning eminent domain."

{Internal References to 7-5-4106: None.}

Section 3. Section 7-7-4404, MCA, is amended to read:

"7-7-4404. Authority to acquire, construct, maintain, and operate various undertakings. ~~In addition to the powers which it may now have, any~~ A municipality ~~shall have power~~ under this part to may:

(1) construct, ~~acquire by gift, purchase, or the exercise of the right of eminent domain,~~ reconstruct, improve, ~~better,~~ or extend any undertaking, within or ~~without~~ outside of the municipality or partially within or partially ~~without~~ outside of the municipality, and acquire by gift, purchase, or the exercise of the right of eminent domain pursuant to Title 70, chapter 30, any undertaking and lands land or rights in land or water rights

in connection ~~therewith~~ with the undertaking;

(2) operate and maintain any undertaking and furnish the service, facilities, and commodities ~~thereof~~ of the undertaking for its own use and for the use of public and private consumers within or ~~without~~ outside of the territorial boundaries of ~~such~~ the municipality; and

(3) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by ~~such~~ the undertaking."

{Internal References to 7-7-4404:
7-6-1506 x}

Section 4. Section 7-13-2218, MCA, is amended to read:

"7-13-2218. District powers related to water and sewer projects. ~~Any~~ A district that is incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a

private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain, pursuant to Title 70, chapter 30, from that water association any type of property referred to in this section;

(3) store water for the benefit of the district;

(4) conserve water for future use;

(5) appropriate, acquire, and conserve water and water rights for the purposes of the district;

(6) in the name of the district, commence, maintain, intervene in, ~~and compromise, in the name of the district,~~ and assume the costs of any action or proceeding:

(a) involving or affecting the ~~ownership or~~ use of ~~waters~~ water, water rights, or sewer rights within the district that are used or useful for any purpose of the district or a benefit to any land situated in the district;

~~(4)(b)~~ (b) ~~commence, maintain, intervene in, defend, and compromise actions and proceedings~~ to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of ~~waters~~ water that is used or useful for any purpose of the district or that is a common benefit to the lands within the district or its inhabitants;

~~(5)(c)~~ (c) ~~commence, maintain, and defend actions and proceedings~~ to prevent any interference with the ~~waters~~ water or water or sewer rights referred to in this section ~~as that~~ may endanger the inhabitants or lands of the district;

~~(6)(7)~~ (7) lease or purchase and carry on and maintain ~~from any person, firm, or public or private corporation, with the~~

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~~privilege of purchase or otherwise,~~ existing water rights, waterworks, sewerworks, canals, or reservoir systems; ~~and carry on and maintain them;~~

~~(7)~~(8) sell water or the use of water for household, ~~or~~ domestic, ~~or~~ other similar purposes, ~~or~~ sell sewer service, and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities, ~~or~~ towns, ~~or to~~ consumers located within or outside of the boundaries of the district;

~~(8)~~(9) retain the services of architects and engineers for designing, preparing a feasibility study for, and drawing plans and specifications ~~of~~ for a water or sewer system for the district, with the cost of these services apportioned and assigned against properties in the district; and

~~(9)~~(10) establish, by ordinance or resolution, rules and regulations for the operation, maintenance, use, and availability of any of ~~its~~ the district's systems or improvements, including but not limited to connection procedures, service termination, and the payment of rates and charges, including penalties and interest charges for delinquent accounts."

{Internal References to 7-13-2218: None.}

Section 5. Section 7-13-4404, MCA, is amended to read:

"7-13-4404. Use of eminent domain powers to acquire water supply system. (1) ~~In case~~ If agreement is not reached pursuant to 7-13-4403, then the city or town shall proceed to acquire the plant or water supply under ~~the laws relating to the taking of~~

~~private property for public use~~ Title 70, chapter 30.

(2) ~~Any~~ A city or town acquiring property under ~~the laws relating to the taking of private property for public use~~ Title 70, chapter 30, shall ~~make payment~~ pay the amount of compensation to the owner ~~or owners~~ of the plant or water supply, ~~of the value thereof legally determined,~~ within 6 months from ~~and after~~ the date that final judgment is entered in the condemnation proceedings."

{Internal References to 7-13-4404: None.}

Section 6. Section 7-13-4405, MCA, is amended to read:

"7-13-4405. Acquisition of water rights and other necessary property. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure appropriate water rights ~~and title to the same~~ and the necessary real and personal property to make ~~said rights and~~ an adequate water supply available~~7.~~ The water rights and property may be acquired by purchase, appropriation, location, condemnation pursuant to Title 70, chapter 30, or ~~otherwise~~ in any other legal manner."

{Internal References to 7-13-4405: None.}

Section 7. Section 7-13-4406, MCA, is amended to read:

"7-13-4406. Control over territory occupied by water supply system -- taxation and condemnation powers. (1) Cities and towns ~~shall~~ have jurisdiction and control:

(a) over the territory occupied by their public works;

(b) over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of ~~such~~ the public works; and ~~also~~

(c) over the source of streams from which water is taken for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply⁷.

(2) ~~with power to~~ Cities and towns may enact all ordinances and regulations necessary to ~~carry the powers hereby conferred into effect~~ implement subsection (1). For this purpose, the city or town ~~shall be authorized to~~ may condemn private property in the manner provided ~~by law~~ in Title 70, chapter 30, and ~~shall have authority to~~ may levy a ~~just and equitable~~ tax on all consumers of water for the purpose of defraying the expenses of ~~its~~ procurement."

{Internal References to 7-13-4406: None.}

Section 8. Section 7-14-101, MCA, is amended to read:

"7-14-101. Acquisition of property for controlled-access facility. The highway authorities of the counties, incorporated cities, and towns may, respectively or in cooperation with each other or the state, ~~may~~ acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. ~~Such~~ The property rights may include rights of access, air, view, and light. ~~They~~ The property rights may be acquired by gift, devise, purchase, or condemnation in the ~~same manner as may now or hereafter be~~

~~authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions provided in Title 60, chapter 4, part 1, and Title 70, chapter 30.~~"

{Internal References to 7-14-101: None.}

Section 9. Section 7-14-1625, MCA, is amended to read:

"7-14-1625. Railroad acquisition and operation -- permits -- eminent domain. (1) Within the boundaries of the authority, the authority may establish, acquire, construct, purchase, improve, maintain, equip, operate, regulate, and protect railroads and railroad facilities, including but not limited to terminal buildings, roadways, crossings, bridges, causeways, tunnels, equipment, and rolling stock, ~~as~~ that may be necessary to carry out the provisions of this part.

(2) The authority may apply to a public agency for permits, ~~consents, authorizations,~~ and approvals required for the acquisition and operation of a railroad and take all actions necessary to comply with ~~their~~ conditions required in a permit or approval.

(3) The authority may acquire property for a public ~~purpose~~ use, as provided in Title 70, chapter 30, in the same manner as a county, except that the authority does not have the power of eminent domain with respect to property owned by another authority or by a political subdivision or property owned by a railroad corporation unless the interstate commerce commission or another ~~authority~~ entity with the power to make the finding has

found that the public convenience and necessity permit discontinuance of rail service on the property."

{Internal References to 7-14-1625: None.}

Section 10. Section 7-14-2101, MCA, is amended to read:

"7-14-2101. General powers of county relating to roads and bridges -- definitions. (1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon between the boards of the counties concerned;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed upon between the boards of the counties concerned and as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

(2) ~~(a)~~ Unless the context requires otherwise, for the purposes of this chapter, the ~~term~~ following definitions apply:

(a) "bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills;

(b) "county road" means:

(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners; or

(iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners.

~~(b)~~ (3)(a) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.

~~(c)~~ (b) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.

~~(d)~~ (c) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners.

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~~(e) Unless the context requires otherwise, the term "bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills."~~

{Internal References to 7-14-2101: None.}

Section 11. Section 7-14-2108, MCA, is amended to read:

"7-14-2108. Recording of instruments related to acquisition of right-of-way. (1) When a right-of-way is voluntarily given or purchased, ~~an~~ a written instrument ~~in writing~~ conveying the right-of-way and incidents ~~thereto~~ to the right-of-way must be signed and acknowledged by the person making it. ~~It~~ The instrument must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right-of-way is condemned pursuant to Title 70, chapter 30, a certified copy of the judgment of the court must be made. ~~It~~ The copy must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments ~~shall~~ must particularly describe the land."

{Internal References to 7-14-2108: None.}

Section 12. Section 7-14-2123, MCA, is amended to read:

"7-14-2123. Acquisition of machinery and materials. (1) Out of the county road fund, ~~each~~ a board of county commissioners may:

(a) purchase and operate grading and other machinery

necessary or desirable for the improvement of the county roads;

(b) acquire deposits or quarries of suitable road-building material by purchase, condemnation pursuant to Title 70, chapter 30, or lease.

(2) ~~Each~~ A board may also acquire ~~such~~ road-building material by gift."

{Internal References to 7-14-2123: None.}

Section 13. Section 7-14-2621, MCA, is amended to read:

"7-14-2621. Establishment and alteration of stock lanes.

(1) A stock lane is a county road established and maintained for the driving and travel of livestock. ~~It shall be~~ A stock lane may not ~~be~~ less than 60 feet wide. The width ~~shall~~ must be determined by the board in the order creating it.

(2) Upon presentation of a proper petition, ~~each~~ a board may establish, alter, or vacate stock lanes when it ~~deems~~ considers it expedient and necessary for the convenience of the public and for the convenience of travel on established roads ~~now established~~. ~~Any~~ A stock lane may adjoin and parallel a county road and ~~shall~~ must be described in the petition for creation and in the order of the board creating ~~it~~ the stock lane.

(3) The provisions of this part and the general laws relating to establishing, altering, and vacating county roads, including the exercise of the right of eminent domain as provided in Title 70, chapter 30, ~~shall~~ apply to stock lanes. References in all petitions, orders, and proceedings ~~shall~~ must be to stock lanes in order to differentiate them from other highways."

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{Internal References to 7-14-2621: None.}

Section 14. Section 7-14-2803, MCA, is amended to read:

"7-14-2803. Establishment and operation of public ferry or wharf upon petition. When ~~it shall be made to appear by a~~ petition to ~~any~~ a board of county commissioners ~~in this state~~ indicates that it is necessary to ~~keep~~ establish and maintain a public ferry across or a wharf at any unfordable stream, lake, estuary, or bay, ~~any the county within the state,~~ through its board of county commissioners, ~~is hereby authorized to~~ may construct a ferry or wharf or ~~to~~ may purchase or acquire a ferry or wharf by condemnation, as provided in Title 70, chapter 30, ~~or purchase and to~~ may operate, and maintain, ~~direct, regulate, and control the operation of~~ a ferry across or a wharf at any unfordable stream, lake, estuary, or bay within or bordering on ~~said the county,~~ together with The county may also acquire, operate, and maintain all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining ~~thereto,~~ to the ferry or wharf. ~~with full jurisdiction and authority to operate and maintain the same~~ The county may operate the ferry or wharf for free or for toll may charge for the use."

{Internal References to 7-14-2803:
7-14-2804 x}

Section 15. Section 7-14-2829, MCA, is amended to read:

"7-14-2829. Acquisition of land for ferry. When ~~there are~~ lands are necessary for the construction, erection, or use of

~~such a~~ ferry ~~which that~~ cannot be procured by agreement between the owner of the ferry and the landowner, the right-of-way and all other lands necessary for the use and construction or erection ~~thereof~~ of the ferry may be acquired by condemnation as provided in Title 70, chapter 30."

{Internal References to 7-14-2829:
7-14-2831*}

Section 16. Section 7-14-4501, MCA, is amended to read:

"7-14-4501. Acquisition, construction, and maintenance of parking areas. A city or town council ~~shall have power to~~ may:

(1) acquire by lease, gift, purchase, or condemnation pursuant to Title 70, chapter 30, lots or lands for use as parking areas for motor vehicles;

(2) construct and maintain ~~thereon~~ on the acquired land or on any premises owned or under lease by ~~such~~ the city or town suitable parking facilities for the use of the public and for general traffic control; and

(3) ~~make charges~~ charge for the use of ~~such~~ parking facilities."

{Internal References to 7-14-4501:
7-14-4502 x}

Section 17. Section 7-14-4622, MCA, is amended to read:

"7-14-4622. Powers of parking commission related to provision of parking services. For the purpose of offstreet parking, each parking commission, subject to the limitations imposed by this part, ~~shall have the following powers~~ may:

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(1) ~~to~~ purchase, lease, obtain option upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest ~~therein~~ in real or personal property, together with any improvements ~~thereon~~ on real property;

(2) ~~to~~ subject to 7-14-4626, acquire by the exercise of the power of eminent domain, as provided in Title 70, chapter 30, any property ~~in accordance with the applicable provisions of the law of eminent domain~~ upon approval of the city council;

(3) ~~to~~ sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest ~~therein~~ in real or personal property;

(4) ~~to~~ lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights-of-way necessary or convenient ~~therefor~~ for offstreet parking;

(5) ~~to~~ insure or provide for the insurance of any real or personal property or operation of the parking commission against risks or hazards;

(6) ~~to~~ acquire, construct, rent, lease, maintain, and repair ~~such~~ real and personal property used for parking services ~~or any portion thereof~~, either on behalf of the parking commission or as an agent of the city, including the leasing of the operation ~~thereof~~ of the offstreet parking;

(7) ~~to~~ regulate onstreet parking ~~where~~ when it remains in use, in coordination with offstreet parking, subject to traffic regulations imposed by the state."

{Internal References to 7-14-4622:

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7-14-4626x 7-14-4628x }

Section 18. Section 7-14-4626, MCA, is amended to read:

"7-14-4626. Limitation on power of eminent domain. (1)

~~Notwithstanding the provisions of 7-14-4622(2), no A parking commission may not acquire the property of a state public body may be acquired entity without its the entity's consent.~~

(2) ~~No A parking commission or the city may not acquire an existing parking facility shall be acquired by the exercise of the power of eminent domain, as provided in Title 70, chapter 30, by a commission or the city except after a public hearing, following A notice of the date, time, place, and purpose of such the hearing must be published once not less than 10 or more than 20 days prior to the date of such the hearing."~~

{Internal References to 7-14-4626: None.}

Section 19. Section 7-14-4801, MCA, is amended to read:

"7-14-4801. Acquisition of landing fields and parking areas for aircraft. ~~The A city or town council has power to may~~ acquire by lease, gift, purchase, or condemnation pursuant to Title 70, chapter 30, lots or lands for landing fields or parking areas for aircraft, within or ~~without outside of~~ the corporate limits of the municipality~~7, and to~~ The city or town council may exercise municipal jurisdiction over the lots or lands acquired pursuant to this section, where such even though the lots or lands or any portion ~~thereof of the lots or lands are without is~~ outside of the corporate limits of the municipality, ~~to the same extent as~~

~~though they were within such corporate limits."~~

{Internal References to 7-14-4801: None.}

Section 20. Section 7-15-4204, MCA, is amended to read:

"7-15-4204. Interpretation. ~~It is further found and declared:~~

~~—— (1) that the~~ The powers conferred by ~~this part and part 43 and this part~~ are for public uses and purposes for which public money may be expended and the power of eminent domain may be exercised, and as provided in Title 70, chapter 30.

~~(2) that the~~ The legislature finds and declares that necessity in the public interest exists for the provisions enacted in ~~this part and part 43 is hereby declared as a matter of legislative determination and this part concerning urban renewal.~~

{Internal References to 7-15-4204: None.}

Section 21. Section 7-15-4258, MCA, is amended to read:

"7-15-4258: Acquisition and administration of real and personal property. (1) ~~Every~~ A municipality ~~shall have power to~~ may:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain pursuant to Title 70, chapter 30, or otherwise any real property and ~~such~~ personal property ~~as~~ that may be necessary for the administration of the provisions contained in ~~this part and part 43 and this part,~~ together with any improvements ~~thereon~~ on the real property;

(b) hold, improve, clear, or prepare for redevelopment ~~any~~ such property acquired pursuant to subsection (1)(a);

(c) dispose of ~~any~~ real or personal property;

(d) insure or provide for the insurance of ~~any~~ real or personal property or the operations of the municipality against any risks or hazards, including the power to pay premiums on any ~~such~~ insurance; and

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

(2) A development agreement entered into in accordance with subsection (1)(e) must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the urban renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined by the local governing body. The development agreement may not constitute the acquisition of an interest in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

(3) However, ~~no~~ statutory ~~provision~~ provisions with respect to the acquisition, clearance, or disposition of property by public bodies ~~shall~~ may not restrict a municipality in the exercise of ~~such~~ functions with respect to an urban renewal project.

(4) A municipality ~~shall~~ may not acquire real property for an urban renewal project or enter into a development agreement,

as provided in subsection (1)(e), unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217."

{ Internal References to 7-15-4258:
7-15-4233x }

Section 22. Section 7-15-4259, MCA, is amended to read:

"7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described ~~therein~~ in the resolution is necessary for an urban renewal project under this part, a municipality ~~shall have the right to~~ may acquire by condemnation, as provided in Title 70, chapter 30, any interest in real property ~~which~~ that it ~~may deem~~ considers necessary for ~~such purpose~~ urban renewal.

(2) Condemnation for urban renewal of blighted areas is ~~declared to be~~ a public use, and property already devoted to any other public use or acquired by the owner or ~~his~~ the owner's predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for ~~such a~~ an urban renewal project ~~shall~~ may not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. ~~No~~ An allowance ~~shall~~ may not be made for the improvements begun on real property after notice to the owner of ~~such~~ the property of

the institution of proceedings to condemn ~~such~~ the property. Evidence ~~shall be~~ is admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use ~~thereof~~ of the premises."

{Internal References to 7-15-4259: None.}

Section 23. Section 7-15-4460, MCA, is amended to read:

"7-15-4460. Powers of housing authority relating to acquisition and disposition of property. (1) An authority ~~shall have power to~~ may:

(a) purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest ~~therein~~ in property from any person, firm, corporation, city, municipality, or government;

(b) acquire by eminent domain, as provided in Title 70, chapter 30, any real property, including improvements and fixtures ~~thereon~~ on the real property;

(c) sell, exchange, transfer, assign, or pledge any real or personal property or any interest ~~therein~~ in property to any person, firm, corporation, municipality, city, or government;

(d) own, hold, clear, and improve property;

(e) insure or provide for the insurance of the property or operations of the authority against ~~such~~ risks ~~as~~ that the authority ~~may deem~~ considers advisable;

(f) procure insurance or guarantees from the federal government of the payment of any debts or parts ~~thereof~~ of debt secured by mortgages made or held by the authority on any

property included in ~~any~~ a housing project.

(2) ~~No provisions~~ Statutes with respect to the acquisition, operation, or disposition of property by other public bodies ~~shall be~~ are not applicable to an authority unless the legislature ~~shall~~ specifically ~~so state~~ declares that the provisions are applicable."

{Internal References to 7-15-4460: None.}

Section 24. Section 7-15-4462, MCA, is amended to read:

"7-15-4462. Exercise of power of eminent domain. (1) After the adoption by ~~it~~ the authority of a resolution declaring that the acquisition of the property described ~~therein~~ in the resolution is in the public interest and necessary for public use, the authority ~~shall have the right to~~ may acquire by eminent domain any real property, including fixtures and improvements, ~~which that~~ it may deem considers necessary to carry out the purposes of ~~this part and part 45~~ and this part.

(2) The authority ~~may~~ shall exercise the power of eminent domain pursuant to the provisions of ~~either:~~

~~—(a) Title 70, chapter 30, or~~

~~—(b) Any other applicable statutory provisions for the exercise of the power of eminent domain.~~

(3) Property already devoted to a public use may be acquired, provided that:

(a) ~~no~~ property belonging to any city or municipality within the boundaries of the authority or belonging to any government may not be acquired without ~~its~~ the government's

consent; and

(b) ~~that no~~ property belonging to a public utility corporation may not be acquired without the approval of the commission or other officer or tribunal, ~~if there be any,~~ having regulatory power over ~~such~~ corporation if the utility is subject to regulatory power."

{ Internal References to 7-15-4462:
7-15-4461x }

Section 25. Section 7-16-2105, MCA, is amended to read:

"7-16-2105. Acquisition of land by county for public recreational or cultural purposes. (1) ~~The counties of this state are authorized to~~ A county may acquire, by purchase, grant, deed, gift, devise, condemnation pursuant to Title 70, chapter 30, or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination ~~thereof~~ of the enumerated uses. ~~or A county~~ may lease the land tracts, each of which must be situated ~~as to offer~~ so that it offers ready access to a public highway.

(2) This section may not be construed as amending or repealing 7-16-2201 through 7-16-2203."

{ Internal References to 7-16-2105:
7-16-2106 x }

Section 26. Section 7-16-4106, MCA, is amended to read:

"7-16-4106. Acquisition of property for athletic fields and civic stadiums. (1) ~~Every~~ A city or town council ~~shall have power to~~ may:

(a) acquire by gift, purchase, or condemnation pursuant to Title 70, chapter 30, lands for athletic fields and civic stadiums within or ~~without~~ outside of the corporate limits of the municipality;

(b) establish and regulate ~~such~~ athletic fields and civic stadiums;

(c) exercise municipal jurisdiction over the ~~lands so~~ acquired land where ~~such lands~~ the land or any portion ~~thereof~~ are without of the land is outside of the corporate limits of the municipality to the same extent as though ~~they were~~ the land was within ~~said~~ the corporate limits; and

(d) construct, maintain, and regulate athletic and civic stadiums ~~thereon~~ on the land.

(2) The city or town ~~councils are authorized to~~ council may set aside or designate portions or tracts of land now owned by any municipality for the purpose of providing athletic fields and civic stadiums."

{Internal References to 7-16-4106: None.}

Section 27. Section 7-35-2201, MCA, is amended to read:

"7-35-2201. Power of county commissioners to conduct cemeteries. ~~The~~ A board of county commissioners ~~of any county within Montana is hereby given jurisdiction and power to~~ may:

(1) establish and conduct cemeteries;

(2) acquire by purchase, gift, devise, or condemnation pursuant to Title 70, chapter 30:

(a) lands for ~~said purpose by purchase, condemnation, gift,~~

~~or devise cemetery purposes;~~ and

~~(3)(b) acquire by purchase, condemnation, gift, or devise~~
cemeteries already established and conducted by persons, firms,
or corporations, including municipal corporations."

{ Internal References to 7-35-2201:
7-35-2202x 7-35-2202x }

Section 28. Section 15-70-301, MCA, is amended to read:

"15-70-301. (Temporary) Definitions. As used in this part,
the following definitions apply:

(1) "Agricultural use" means use of special fuel by a
person who earns income while engaging in the business of farming
or ranching and who files farm income reports for tax purposes as
required by the United States internal revenue service.

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal
with a corporate surety qualified under the laws of Montana,
payable to the state of Montana, and conditioned upon faithful
performance of all requirements of this part, including the
payment of all taxes, penalties, and other obligations of the
special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user,
under terms and conditions that the department may prescribe, of
certificates of deposit or irrevocable letters of credit issued
by a bank and insured by the federal deposit insurance
corporation.

(3) "Bulk delivery" means placing special fuel not intended

for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in

and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale,

use, or distribution.

(12) "Improperly imported fuel" means special fuel ~~as defined in subsection (16)~~ that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with

jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) (a) "Special fuel user" means a person ~~other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state~~ who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state. (Terminates June 30, 2001--sec. 7, Ch. 461, L. 1999.)

15-70-301. (Effective July 1, 2001) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business of farming or ranching and whose primary source of earned income is from the business of farming or ranching.

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean

special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel ~~as defined in subsection (16)~~ that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political

subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) (a) "Special fuel user" means a person ~~other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state~~ who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state,

a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

{ Internal References to 15-70-301:

15-70-121x	15-70-201x	15-70-201x	15-70-304x
15-70-304x	15-70-304x	15-70-327x	15-70-341x
15-70-364x	20-15-403x }		

Section 29. Section 15-70-701, MCA, is amended to read:

"15-70-701. Definitions. As used in this part, the following definitions apply:

(1) "Bond" means:

(a) a bond executed by a compressed natural gas dealer or a liquefied petroleum gas dealer as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the compressed natural gas dealer or the liquefied petroleum gas dealer arising out of this part; or

(b) a deposit with the department by the compressed natural gas dealer or the liquefied petroleum gas dealer, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2) "Compressed natural gas" means a product that is used as a fuel and that contains carbon or hydrogen, or both, and is

compressed to greater than 24 pounds per square inch absolute base pressure and up to 3,600 pounds per square inch absolute base pressure when sold for use in motor vehicles operated on the public roads and highways of this state.

(3) "Compressed natural gas dealer" or "dealer" means a person who delivers any part of compressed natural gas into the fuel supply tank or tanks of a motor vehicle.

(4) "Department" means the department of transportation.

(5) "Liquefied petroleum gas" means any petroleum product that is sold for use in motor vehicles and that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons:

(a) propane;

(b) propylene;

(c) butane, including normal butane or isobutane; or

(d) butylene.

(6) "Liquefied petroleum gas dealer" or "dealer" means a person who delivers any part of liquefied petroleum gas into the fuel supply tank or tanks of a motor vehicle.

(7) "Motor vehicle" means any vehicle that is self-propelled by compressed natural gas or by liquefied petroleum gas and that is driven upon the public roads and highways of this state.

(8) (a) "Person" means a person, firm, association, joint-stock company, syndicate, partnership, or corporation.

(b) When used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association,

syndicate, or partnership, person means the partners or members of a firm, association, syndicate, or partnership, ~~as.~~ As applied to a joint-stock company or corporation, the term means the officers of the joint-stock company or corporation.

(9) "Public roads and highways of this state" means all streets, roads, highways, and related structures that are:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state."

{ Internal References to 15-70-701:
15-70-704x 15-70-704x }

Section 30. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of fish, wildlife, and parks. (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. ~~and The department~~ may by purchase, lease, agreement, or acceptance of donations, ~~or condemnation for the purposes outlined in 87-1-209(2)~~ acquire for the state any areas, sites, or objects ~~which~~ that in its opinion should be held, improved, and maintained as state parks, state

recreational areas, state monuments, or state historical sites. The department, with the consent of the commission, may acquire by condemnation pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).

(2) The department may ~~in its discretion~~ accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may ~~in its discretion~~ accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or ~~other~~ another obligation incurred until ~~moneys have~~ money has been appropriated by the legislature or ~~are~~ is otherwise available. ~~and, if~~ If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, ~~until~~ the board of land commissioners ~~has~~ shall specifically ~~approved such~~ approve the acquisition.

(4) The department ~~also~~ has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area, and may name or change the name of any area

~~as designated.~~ The department may lease those portions of designated lands ~~which~~ that are necessary for the proper administration of ~~these~~ the lands in keeping with the basic purpose of this part."

{ Internal References to 23-1-102:

15-35-108x 23-1-108x 23-2-404x }

Section 31. Section 35-18-106, MCA, is amended to read:

"35-18-106. Powers of cooperatives. (1) A cooperative ~~has~~
~~power to~~ may:

~~(1)~~(a) sue and be sued in its corporate name;

~~(2)~~(b) have perpetual existence;

~~(3)~~(c) adopt a corporate seal and alter the ~~same at~~
~~pleasure~~ seal;

~~(4)~~(d) become a member in one or more other cooperatives or corporations or ~~to~~ own stock in other cooperatives or corporations;

~~(5)~~(e) construct, purchase, take, receive, lease as lessee, or otherwise acquire and ~~to~~ own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber:

(i) electric transmission and distribution lines or systems_;

(ii) electric generating plants_;

(iii) electric refrigeration plants_;

(iv) telephone lines, facilities_, or systems (but not telegraph or radio broadcasting services or facilities) as

defined by law;

(v) lands, buildings, structures, dams, plants and equipment, and all kinds or classes of real or personal property, ~~which~~ that may be considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

~~(6)~~ (f) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

~~(7)~~ (g) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness and secure the payment of indebtedness by mortgage, pledge, deed of trust, or any other encumbrance upon all of its ~~then-owned~~ then-owned or after-acquired real or personal property, assets, franchises, ~~revenues~~ revenue, or income;

~~(8)~~ (h) subject to the requirements on the use of public thoroughfares and land that are imposed by the appropriate authority having jurisdiction over corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems, construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems;

(i) along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets,

alleys, bridges, and causeways; and

~~(ii) upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of the thoroughfares and lands as are imposed by the respective authorities having jurisdiction of them upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;~~

~~(9)(i)~~ exercise the power of eminent domain in the manner provided by the laws of this state in Title 70, chapter 30, for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

~~(10)(j)~~ conduct its business and exercise all of its powers within or without outside of this state;

~~(11)(k)~~ adopt, amend, and repeal bylaws; and

~~(12) in the case of corporations organized under the provisions of 35-18-105(1):~~

~~— (a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members,~~

~~— (b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character~~

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~~and, in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures,~~

~~—— (c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants,~~

~~—— (13) in the case of corporations organized under the provisions of 35-18-105(2):~~

~~—— (a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish additional telephone lines, facilities, and systems as that are required to assure the availability of adequate telephone service to the widest practicable number of users of telephone service,~~

~~—— (b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment and~~

~~accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures,~~

~~(14)~~(1) do and perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized or authorized under federal law.

(2) In addition to the powers listed in subsection (1), corporations organized under the provisions of 35-18-105(1) may:

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electrical energy;

(b) distribute, sell, supply, and dispose of electrical energy in rural areas to:

(i) its members;

(ii) governmental agencies and political subdivisions; and

(iii) other persons not in excess of 10% of the number of its members;

(c) make loans to persons to whom electrical energy is or will be supplied by the cooperative to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character;

(d) in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign,

transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures; and

(e) make loans to persons to whom electrical energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants.

(3) In addition to the powers listed in subsection (1), corporations organized under the provisions of 35-18-105(2) may:

(a) improve and expand existing telephone lines, facilities, and systems;

(b) construct, acquire, operate, and furnish additional telephone lines, facilities, and systems that are required to ensure the availability of adequate telephone service to the widest practicable number of users of telephone service;

(c) make loans to persons to whom telephone service is or will be supplied by the cooperative to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character;

(d) in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment; and

(e) accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures."

{Internal References to 35-18-106: None.}

Section 32. Section 35-20-104, MCA, is amended to read:

"35-20-104. Effect of filing -- powers of association -- eminent domain. ~~Whenever such~~ When a certificate of incorporation is ~~duly~~ acknowledged, ~~and~~ recorded, and filed as provided in ~~the last section 35-20-103,~~ the association ~~mentioned therein shall be deemed~~ is considered legally incorporated and ~~shall have~~ has the general powers and privileges of corporations with the right to sue and be sued and to continue perpetually, ~~and in addition thereto such corporations shall have the right and power to~~ The association may also take private property for public use ~~to be used exclusively~~ for a cemetery or place of burial of the dead. ~~Such~~ The power of eminent domain ~~to~~ must be exercised under the provisions of Title 70, chapter 30."

{Internal References to 35-20-104: None.}

Section 33. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, FAIM financial assistance, as defined in 53-2-902, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, medical care payments in behalf of recipients of public assistance, employment and training services for recipients of

public assistance, and other programs as necessary to strengthen and preserve families;

(b) give consultant service to private institutions providing care for adults who are needy, indigent, or dependent or who have disabilities;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes;

(g) make rules governing payment for services and supplies provided to recipients of public assistance; and

(h) adopt rules regarding assignment of monetary and medical support upon application for FAIM financial assistance, as defined in 53-2-902, and related medical assistance.

(2) The department may:

(a) purchase, exchange, condemn, as provided in Title 70, chapter 30, or receive by gift either real or personal property that is necessary to carry out its public assistance functions. Title to property obtained under this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

{Internal References to 53-2-201: None.}

Section 34. Section 60-1-103, MCA, is amended to read:

"60-1-103. General definitions. Subject to additional definitions contained in this title that are applicable to specific chapters or sections and unless the context otherwise requires, the following definitions apply:

(1) "Abandonment" means cessation of use of right-of-way or an easement or cessation of activity on the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes called vacation.

(2) "Bridge" means any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, and replacements and the approaches to

the bridge, lands used in connection with the bridge, and improvements incidental or integral to the bridge.

(3) "Commission" means the transportation commission provided for in 2-15-2502.

(4) "Condemnation" means taking by exercise of the right of eminent domain, as provided in Title 70, chapter 30, and chapter 4 of this title.

(5) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(6) "Control of access" means the condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(7) "County road" means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(8) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(9) "Director" means the director of transportation, a position provided for in 2-15-2501.

(10) "Easement" means a right acquired by public authority to use or control property for a designated purpose.

(11) "Eminent domain" means the right of the state to take private property for public use.

(12) "Federal-aid highway" means a public highway that is a portion of any of the federal-aid highway systems.

(13) "Federal-aid highway systems" means all of the systems named as part of the systems and their urban extensions.

(14) "Federal-aid interstate system" means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(15) "Federal-aid primary system" means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(16) "Federal-aid secondary system" means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(17) "Fee simple" means an absolute estate or ownership in property, including unlimited power of alienation.

(18) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(19) "Highway", "road", and "street", whether the terms appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the

right-of-way.

(20) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(21) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and traffic-control devices that are necessary for the safe and efficient use of the highway.

(22) "Public highways" means all streets, roads, highways, bridges, and related structures:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 70, chapter 30, and chapter 4 of this title; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(23) "Right-of-way" is a general term denoting land, property, or any interest in land or property, usually in a strip, acquired for or devoted to highway purposes.

(24) "Scenic-historic byway" means a public road or segment of a public road that has been designated as a scenic-historic byway by the commission, as provided in 60-2-601.

(25) "State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department."

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{ Internal References to 60-1-103:

17-5-903x	61-8-310x	61-8-314x	61-10-102x
61-10-124x	61-10-124x }		

Section 35. Section 60-5-104, MCA, is amended to read:

"60-5-104. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use. Each ~~such~~ authority shall by resolution make the findings and determinations provided for in 60-5-103 in order to designate a highway as a controlled-access facility.

(2) The highway authorities of the state, counties, incorporated cities, and towns, respectively, or in cooperation each with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. ~~Such~~ The property rights may include rights of access, air, view, and light. ~~They~~ The property and property rights may be acquired by gift, devise, purchase, or condemnation, ~~in the same manner as may now or hereafter be authorized by law~~ as provided in Title 70, chapter 30, and chapter 4 of this title, for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(3) Within incorporated cities and towns and upon county roads or secondary highways, the department of transportation ~~shall~~ may not control access without the consent of the

appropriate governing body.

(4) Each authority may also exercise with relation to controlled-access facilities any ~~and all additional~~ current or future authority ~~now or hereafter vested in it~~ has over highways, roads, or streets within its ~~respective~~ jurisdiction. ~~It~~ Each authority may, within its jurisdiction, regulate, restrict, or prohibit the use of controlled-access facilities by any vehicles or traffic."

{Internal References to 60-5-104: None.}

Section 36. Section 67-2-301, MCA, is amended to read:

"67-2-301. State airports -- acquisition. (1) The department may, on behalf of and in the name of this state:

(a) acquire real or personal property by purchase, gift, devise, lease, condemnation proceedings pursuant to Title 70, chapter 30, or otherwise for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities;

(b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside of this state;

(c) prior to acquisition, make investigations, surveys, and plans;

(d) erect, install, construct, and maintain facilities at those airports for the servicing of aircraft and for the comfort and accommodation of air travelers; and

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(e) dispose of any property, airport, restricted landing area, or ~~any~~ other air navigation facility by sale, lease, or otherwise in accordance with the laws of this state governing the disposition of other ~~like~~ similar property of the state.

(2) The department may not, ~~however,~~ acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality. The department may erect, equip, operate, and maintain ~~on~~ at an airport, all buildings and equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities connected with ~~it~~ the airport.

(3) ~~Where~~ When necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this title, the department may acquire, in the manner provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and ~~such~~ other airport protection privileges ~~as~~ that are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of them. The department may also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including

the right of ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this state.

(4) The department may engage in ~~all those~~ the activities listed in subsections (1) through (3) jointly with the United States, with other states, and with municipalities or other agencies of this state.

(5) For the purpose of acquiring any property ~~which~~ that it is authorized to acquire, the department may exercise the right of eminent domain, in the name of the state, in the manner provided ~~by the laws of this state for the acquisition of real property for public purposes~~ in Title 70, chapter 30. The acquisition of property for any of ~~those~~ the purposes listed in this section is a public use."

{Internal References to 67-2-301: None.}

Section 37. Section 67-5-202, MCA, is amended to read:

"67-5-202. Regulation of existing structures -- power of acquisition. ~~With respect to any~~ A building or other structure existing on February 7, 1939, ~~which~~ that does not conform to the height regulations of this chapter ~~in the manner of height,~~ is subject to acquisition by the governmental entity owning or operating an airport or landing field. In order to protect its own airports and landing fields and to implement this chapter,

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the governmental authority ~~affected thereby (whether the United States, the state of Montana, the several counties, or the several municipalities)~~ in its own right and name, to protect its own airports and landing fields and to carry out the purposes and provisions of this chapter, shall have and is hereby given the right and authority to may acquire by purchase, grant, or condemnation pursuant to Title 70, chapter 30, such an estate or interest in any ~~such~~ building, ~~or~~ structure, or other object, whether natural object or not, ~~and/or~~ and in the lands upon which it is situated ~~as that~~ is necessary to vest full ~~and absolute~~ ownership and control in perpetuity of the space above ~~such the~~ land. The acquisition is limited to the extent necessary to correct ~~or abate~~ the height of any ~~such~~ nonconforming building, ~~or~~ other structure, or object to meet the requirements of this chapter ~~as~~ with respect to height limitation within the designated zones ~~designated~~."

{Internal References to 67-5-202: None.}

Section 38. Section 67-6-301, MCA, is amended to read:

"67-6-301. Acquisition of property rights when zoning not sufficient. The political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it the airport may acquire, by purchase, grant, or condemnation ~~in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes pursuant to Title 70, chapter 30, such an~~ air right, aviation easement, or other estate or

interest in the property or nonconforming structure or use ~~in question as may be~~ that is necessary to effectuate the purposes of this chapter, ~~in any case in which~~ The governmental entity may acquire an interest when:

(1) it is ~~desired~~ desirable to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the necessary approach protection ~~necessary~~ cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations."

{Internal References to 67-6-301: None.}

Section 39. Section 67-10-102, MCA, is amended to read:

"67-10-102. Acquisition and establishment of airports and landing fields. (1) Counties, cities, and towns ~~in this state~~ may, either individually or by the joint action of a county and one or more of the cities and towns within ~~its border~~ the county, acquire by gift, deed, purchase, or condemnation pursuant to Title 70, chapter 30, land for airport or landing field purposes. ~~and thereon~~ The local governments may use the land to establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft ~~and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned, or controlled by such county, city, or town.~~

(2) In addition, a county, city, or town may ~~do the acts~~ authorized exercise the authority granted by this section by acting jointly with one or more counties, with one or more cities, with one or more towns, or with any combination of ~~such~~ counties, cities, or towns. ~~Such~~ A multijurisdictional airport ~~need is~~ not required to be located, in whole or in part, within the limits of each subdivision participating in the joint venture."

{ Internal References to 67-10-102:
67-10-103x 67-10-202x }

Section 40. Section 67-10-103, MCA, is amended to read:

"67-10-103. Public purpose. (1) Any lands acquired, owned, controlled, or occupied by any county, city, or town, individually or pursuant to joint action ~~as herein provided~~ for the purposes enumerated in 67-10-102, are acquired, owned, controlled, and occupied for a public use and as a matter of public necessity, ~~and such counties~~ Counties, cities, and towns, whether acting individually or jointly, have the right to acquire property for ~~such~~ the enumerated purposes under the power of eminent domain as ~~and for a public use or necessity provided in~~ Title 70, chapter 30.

(2) The following are public and governmental functions, exercised for a public purpose and as matters of public necessity:

(a) the acquisition of any land or an interest therein in land pursuant to this chapter;

(b) the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports and air navigation facilities, including the acquisition or elimination of airport hazards; and

(c) the exercise of any other powers ~~herein~~ granted in this chapter to municipalities and other public agencies, to be severally or jointly exercised, ~~are public and governmental functions, exercised for a public purpose and matters of public necessity and, in the case of any county, are county functions and purposes as well as public and governmental and, in the case of any municipality other than a county, are municipal functions and purposes as well as public and governmental.~~

(3) All land and other property and privileges acquired and used by or on behalf of any municipality or other public agency in the manner and for the purposes enumerated in this chapter are acquired and used for public and governmental purposes and as a matter of public necessity and, in the case of a county or municipality, for county or municipal purposes, respectively."

{Internal References to 67-10-103: None.}

Section 41. Section 67-10-201, MCA, is amended to read:

"67-10-201. General municipal powers. (1) Every A municipality may, out of any appropriations or other money made available for ~~such~~ airport purposes, plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities,

either within or ~~without~~ outside of the territorial limits of ~~such~~ the municipality and within or ~~without~~ outside of the territorial boundaries of this state~~7~~, ~~including~~ The airport purposes include the construction, installation, ~~equipment~~ equipping, maintenance, and operation at ~~such~~ airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as an incident to the operation of its airport properties. ~~For such purposes the~~ A municipality may use any available property that it may now or hereafter own or control and may, owns or controls for airport purposes. A municipality may acquire real or personal property or any interest in property by purchase, gift, devise, lease, eminent domain proceedings pursuant to Title 70, chapter 30, or otherwise, acquire property, real or personal, or any interest therein, A municipality may also acquire property interests, including easements, in airport hazards or land outside the boundaries of an airport or airport site, as is that are necessary to:

(a) permit safe and efficient operation of the airport;

(b) ~~to~~ permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards; or

(c) ~~to~~ prevent the establishment of airport hazards.

(2) The municipality may, by purchase, gift, devise, lease, eminent domain proceedings as provided in Title 70, chapter 30, or otherwise, acquire existing airports and air navigation

facilities~~7. provided however it~~ However, a municipality may not acquire ~~or take over~~ any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other state without the consent of ~~such~~ the municipality or public agency.

(3) For the purposes of this chapter, a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over, and upon any public waters of this state, any submerged lands under ~~such~~ public waters ~~and any artificial or reclaimed lands which~~ that before the artificial making or reclamation ~~thereof~~ constituted a portion of the submerged lands under ~~such~~ the public waters~~7. and~~ A municipality may construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any ~~such~~ airport~~7~~ and may construct and maintain landing floats and breakwaters for the protection ~~thereof~~ of the other improvements.

(4) All air navigation facilities established or operated by municipalities ~~shall~~ must be supplementary to and coordinated in design and operation with ~~those~~ air navigation facilities established and operated by the federal and state governments.

(5) A municipality may enter into any contracts necessary ~~for the execution of the powers granted it and~~ for the purposes provided by this chapter."

{Internal References to 67-10-201: None.}

Section 42. Section 67-10-205, MCA, is amended to read:

"67-10-205. Joint airport board. (1) Public agencies acting jointly pursuant to 67-10-204 through 67-10-206 shall create a joint board ~~which shall~~ that must consist of members appointed by the governing body of each participating public agency. Per diem and mileage of ~~such~~ the joint board may be set by resolution of the board of county commissioners. The number of members to be appointed and their ~~term shall~~ terms must be provided for in the joint agreement. ~~Each such~~ A joint board shall organize, select officers for terms to be fixed by the agreement, and from time to time adopt and amend rules for its own procedure. The joint board ~~shall have power to~~ may plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated, ~~and such~~ Subject to subsection (2), the board may exercise on behalf of its constituent public agencies all the powers of each public agency with respect to ~~such the~~ airport, air navigation facility, or airport hazard, ~~subject to the limitations of subsection (2) of this section.~~

(2) (a) The total expenditures to be made by the joint board for any purpose in any calendar year ~~shall~~ must be determined by a budget approved by the governing bodies of its constituent public agencies.

(b) ~~No~~ An airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums ~~therefor~~ fixed by the joint agreement or allotted in the annual budget, may not be acquired by the joint board without the

approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings authorized under 67-10-204 through 67-10-206 and conducted as provided in Title 70, chapter 30, may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If ~~so~~ authorized, ~~such~~ eminent domain proceedings ~~shall~~ must be instituted in the names of the constituent public agencies jointly, and the property ~~so~~ acquired ~~shall~~ must be held by ~~said~~ the public agencies as tenants in common until conveyed by them to the joint board.

(d) The joint board ~~shall~~ may not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies~~7. provided that~~ However, the joint board may, without ~~such~~ consent, enter into the contract, lease, or other arrangements contemplated by 67-10-302.

(e) Any resolutions, rules, or orders of the joint board ~~dealing that deal~~ with subjects authorized by 67-10-301 ~~shall become~~ are effective only upon approval of the governing bodies of the constituent public agencies~~7. provided that upon such~~ Upon approval, the resolutions, rules, or orders of the joint board ~~shall~~ have the same force and effect in the territories or jurisdictions involved ~~as that~~ the ordinance, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction."

{Internal References to 67-10-205:

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67-10-204*x 67-10-204*x 67-10-204*x 67-10-205*x
67-10-205* x 67-10-206x 67-10-206x }

Section 43. Section 67-10-221, MCA, is amended to read:

"67-10-221. Airport property -- acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, the municipality shall proceed ~~in the manner as provided by the laws governing eminent domain of the state of Montana in Title 70, chapter 30.~~ The municipality is not precluded from abandoning ~~such the~~ proceedings in any case ~~where~~ in which possession of the property has not been taken."

{Internal References to 67-10-221: None.}

Section 44. Section 67-11-201, MCA, is amended to read:

"67-11-201. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this chapter, including, subject to 15-10-420, the power to certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for airport purposes, ~~and including but not limited to the power~~ Authority powers include but are not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take ~~such~~ other action ~~as that~~ may be necessary or convenient to carry out the purposes of this chapter;

(3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at the airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities that are incident to the operation of its airport properties. For the authorized purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings pursuant to Title 70, chapter 30, or otherwise, acquire property, real or personal, or any interest in property, including easements in airport hazards or land outside the boundaries of an airport or airport site, that is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

(4) establish comprehensive airport zoning regulations in accordance with the laws of this state;

(5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities, ~~provided, however~~ However, an authority may not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or a public agency of this or any other state without the consent of the authority, municipality, or public

agency~~7.~~

(6) establish or acquire and maintain airports in, over, and upon any public waters of this state or any submerged lands under public waters, provided that the authority has obtained the approval of the owner or agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any airport and landing floats and breakwaters for the protection of the airport."

{Internal References to 67-11-201: None.}

Section 45. Section 67-11-204, MCA, is amended to read:

"67-11-204. Joint board. (1) Public agencies acting jointly pursuant to 67-11-203 through 67-11-205 shall create a joint board ~~which shall~~ that must consist of members appointed by the governing body of each participating public agency. The number of members to be appointed and their ~~term~~ terms and compensation, if any, ~~shall~~ must be provided for in the joint agreement. ~~Each~~ A joint board shall organize, select officers for ~~such~~ terms ~~as~~ that are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board, as agent of the participating public agencies, may plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated~~7.~~ and the Subject to subsection (2), the board may be authorized by the participating public agencies to exercise on

behalf of its constituent public agencies all the powers of each public agency with respect to the airport, air navigation facility, or airport hazard, ~~subject to the limitations of subsection (2) of this section.~~

(2) (a) The total expenditures to be made by the joint board for any purpose in ~~any~~ a calendar year ~~shall~~ must be as determined by a budget approved by the constituent public agencies on or before the preceding June 10 or as otherwise specifically authorized by the constituent public agencies.

(b) ~~No~~ An airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed ~~therefor~~ by the joint agreement or allotted in the annual budget, may not be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under 67-11-203 through 67-11-205 and Title 70, chapter 30, may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If ~~so~~ authorized, ~~such the~~ proceedings ~~shall~~ must be instituted in the names of the constituent public agencies jointly, and the property ~~so~~ acquired ~~shall~~ must be held by the public agencies as tenants in common.

(d) The joint board may not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without ~~such~~ consent, enter into contracts, leases, or other

arrangements contemplated by 67-11-211.

(e) Resolutions, rules, or orders of the joint board ~~dealing that deal~~ with subjects authorized by 67-11-211 become effective only upon approval of the governing bodies of the constituent public agencies. However, upon ~~such~~ approval, the resolutions, rules, or orders of the joint board ~~shall~~ have the same force in the territories or jurisdictions involved ~~as that~~ the ordinances, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction."

{ Internal References to 67-11-204:

67-11-203*x	67-11-203*x	67-11-204* x	67-11-204*x
67-11-205*x	67-11-205x }		

Section 46. Section 67-11-231, MCA, is amended to read:

"67-11-231. Airport property -- acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed ~~in the manner provided by the laws of this state and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain as provided in Title 70, chapter 30.~~ The municipality ~~shall~~ is not ~~be~~ precluded from abandoning ~~such the~~ proceedings in any case ~~where~~ in which possession of the property has not been taken."

{ Internal References to 67-11-231: None. }

Section 47. Section 67-11-401, MCA, is amended to read:

"67-11-401. Out-of-state airport jurisdiction --

reciprocity. (1) ~~This section may be cited as the~~
~~"Extraterritorial Airports Section".~~

~~—~~(2) For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

~~(3)~~(2) ~~This~~ The state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

~~(4)~~(3) (a) ~~Any~~ A state adjoining this state or any governmental agency ~~thereof~~ of an adjoining state may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. ~~The~~ Subject to subsection (3)(b), the adjoining state or governmental agency ~~shall have~~ has the power of eminent domain in this state, which ~~shall~~ must be exercised ~~in the manner provided by the laws of this state governing condemnation proceedings,~~ as provided in Title 70, chapter 30.

(b) The power of eminent domain ~~shall~~ may not be exercised unless the adjoining state authorizes the exercise of that power ~~therein~~ in the adjoining state by this state or any governmental agency ~~thereof~~ of this state having any of the powers mentioned

in this section.

~~(5)~~(4) The powers granted in this section may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in ~~such a~~ combination ~~as that~~ may be agreed upon by ~~them~~ the states or governmental agencies."

{Internal References to 67-11-401: None.}

Section 48. Section 69-13-104, MCA, is amended to read:

"69-13-104. Use of power of eminent domain. Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this chapter, ~~which shall have that has~~ filed with the commission its acceptance of the provisions of this chapter, ~~is hereby granted has~~ the right and power of eminent domain. ~~in~~ In the exercise of ~~which he, it, or they~~ the power of eminent domain, the entity may enter upon and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or authorization of ~~his, its, or their~~ the entity's common carrier pipeline. The ~~manner and method of such condemnation and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads~~ power of eminent domain must be exercised as provided in Title 70, chapter 30."

{Internal References to 69-13-104: None.}

Section 49. Section 69-14-513, MCA, is amended to read:

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"69-14-513. Lease or purchase of other railroads. (1) Any railroad corporation, whether chartered by or organized under the laws of ~~the state or territory of~~ Montana, the United States, or any other state ~~or territory~~, may lease or purchase the whole or any part of the railroad or rail line ~~of railroad~~ of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises, and all other property or appurtenances ~~thereto~~ to the railroad or rail line. The railroad company of any other state of the United States ~~which that~~ purchases or leases a railroad or any part ~~thereof~~ of a railroad in this state:

(a) ~~shall possess~~ possesses and may exercise and enjoy, as to the control, management, and operation of the road, all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain, as provided in Title 70, chapter 30; and

(b) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state.

(2) Any railroad company may sell or lease the whole or any part of its railroad or branches within this state, constructed or to be constructed, together with all property and rights, privileges, and franchises pertaining ~~thereto~~ to the railroad or branches, to any railroad company organized or existing pursuant to the laws of the United States, this state, or any other state

~~or territory~~ of the United States.

(3) All roads or branches ~~thereof~~ of a railroad in this state, whether purchased or leased, ~~shall be~~ are subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state.

(4) Before any ~~such~~ lease or purchase ~~shall be~~ is effective, ~~it shall~~ the lease or purchase must be assented to or approved or ratified by the stockholders of each corporation by a vote in favor ~~thereof~~ of the lease or purchase, at a general or special meeting of ~~such~~ stockholders, by the holders of a majority ~~in amount~~ of all the outstanding capital stock of the company."

{Internal References to 69-14-513: None.}

Section 50. Section 69-14-536, MCA, is amended to read:

"69-14-536. Extension of rail lines into Montana. (1) Any railroad corporation chartered by or organized under the laws of the United States or of any state ~~or territory~~ may extend, construct, maintain, and operate its railroad into and through this state to any place within the state and may build branches from any point on ~~such~~ the extension or continuation of any ~~such~~ extension or branch. Before making ~~such~~ an extension into the state or building any ~~such~~ branch road or any ~~such~~ continuation, the corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of ~~such~~ the proposed extension, branch, or

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continuation and file a copy of ~~such~~ the record, certified by the president and secretary, in the office of the secretary of state, ~~who~~ The secretary of state shall record the ~~same~~ resolution ~~when presented for record. Thereupon such~~ After the recording, the corporations ~~shall~~ have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate ~~such~~ the extension and build, maintain, and operate ~~such~~ the branch or continuation, including the right of eminent domain as provided in Title 70, chapter 30, ~~which that~~ it would have ~~had~~ if it had been incorporated ~~for such purposes~~ under the general laws of Montana. Any corporation of another state or of the United States extending its railroad or any portion ~~thereof~~ of its railroad into or through this state:

(a) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state; and

(b) is subject to taxation and regulation and control by the laws of this state, in all respects ~~the same~~ as if the line were constructed by corporations organized under the laws of this state.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States ~~shall be~~ is permitted to avail itself of the benefits of this section, ~~such~~ the corporation shall file with the secretary of state a ~~true~~ copy of its charter or articles of incorporation."

{Internal References to 69-14-536: None.}

Section 51. Section 69-14-552, MCA, is amended to read:

"69-14-552. Authority to hold and transfer property. Every railroad corporation ~~has power to~~ may:

(1) receive, hold, take, and convey, by deed or otherwise, as a natural person, ~~such~~ voluntary grants and donations of real estate and other property ~~which~~ that may be made to ~~it~~ the corporation to aid and encourage the construction, maintenance, and accommodation of ~~such~~ the railroad;

(2) purchase or by voluntary grants or donations receive, enter, take possession of, hold, and use all ~~such~~ real estate and other property ~~as~~ that may be absolutely necessary for the construction and maintenance of ~~such~~ the railroad and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

(3) purchase ~~lands~~ land, timber, stone, gravel, or other ~~materials~~ material to be used in the construction and maintenance of its road and all related projects necessary ~~appendages and adjuncts~~ for the construction and maintenance of the railroad or acquire them in the manner provided in Title 70, chapter 30, for the condemnation of lands."

{Internal References to 69-14-552: None.}

Section 52. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised ~~in behalf of~~ for the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city, ~~or~~ town, or school district;

(4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

(5) ~~raising projects to raise~~ the banks of streams, ~~removing~~ ~~remove~~ obstructions ~~therefrom~~ ~~from streambanks~~, and ~~widening,~~ ~~deepening,~~ or ~~straightening their~~ widen, deepen, or straighten stream channels;

(6) water and water supply systems as provided in Title 7, chapter 13, part 44;

(7) roads, streets, and alleys, controlled-access facilities, and all other public uses for the benefit of any a county, city, or town or the inhabitants ~~thereof, which may be~~ ~~authorized by the legislature, but the mode of apportioning and~~ ~~collecting the costs of such improvements shall be such as may be~~ ~~provided in the statutes or ordinances by which the same may be~~ authorized of a county, city, or town;

(8) acquisition of road-building material as provided in 7-14-2123;

(9) stock lanes as provided in 7-14-2621;

(10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport and landing field purposes as provided in 7-14-4801, 67-2-301, 67-5-202, 67-6-301, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

(14) county recreational and cultural purposes as provided in 7-16-2105;

(15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

(16) county cemetery purposes as provided in 7-35-2201 and cemetery association purposes as provided in 35-20-104;

(17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

(18) public assistance purposes as provided in 53-2-201;

(19) highway purposes as provided in 60-4-103 and 60-4-104;

(20) common carrier pipelines as provided in 69-13-104;

(21) water supply, water transportation, and water treatment systems as provided in 75-6-313;

(22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

(23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in

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75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

(4)(30) wharves, docks, piers, chutes, booms, ferries, bridges, ~~of all kinds~~, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for ~~public transportation~~;

(a) supplying mines, mills, and smelters for the reduction of ores; and

(b) supplying farming neighborhoods with water and drainage; and

(c) reclaiming lands; and for

(d) floating logs and lumber on streams that are not navigable; and

(32) sites for reservoirs necessary for collecting and storing water. However, ~~such~~ reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(5)(33) roads, tunnels, ~~ditches, flumes, pipes~~, and dumping places for working mines, mills, or smelters for the reduction of

ores;

(34) ~~also~~ outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) ~~also~~ an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, ~~such the~~ reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

~~(6)~~(36) private roads leading from highways to residences or farms;

~~(7)~~(37) telephone or ~~electric light~~ electrical energy lines;

~~(8)~~(38) telegraph lines;

~~(9)~~(39) sewerage of any;

(a) county, city, ~~county~~, or town or any subdivision thereof of a county, city, or town, whether incorporated or unincorporated, ~~or of~~;

(b) any settlement consisting of not less than 10 families; or

(c) of any public buildings belonging to the state or to any college or university;

~~(10)~~(40) tramway lines;

~~(11) electric power lines;~~

~~(12)~~(41) logging railways;

~~(13)~~(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for ~~such a time as that~~ the court or judge may determine~~7.~~ provided However, the grounds of state institutions ~~be excepted~~, may not be used for this purpose.

~~(14)~~(43) underground reservoirs suitable for storage of natural gas;

~~(15)~~(44) projects to mine and extract ores, metals, or minerals owned by the ~~plaintiff~~ condemnor located beneath or upon the surface of property where the title to ~~said the~~ surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose~~7.~~

~~(16)~~(45) projects to restore and reclaim lands ~~strip or underground-mined~~ that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands."

{ Internal References to 70-30-102:
70-30-103x 77-2-101 x }

Section 53. Section 70-30-103, MCA, is amended to read:

"70-30-103. What private property may be taken. (1) The ~~private~~ property ~~which~~ that may be taken under this chapter

includes:

- (a) all real property belonging to any person;
- (b) ~~lands belonging~~ land that belongs to this state or to any county, city, or town and that is not appropriated to some public use;
- (c) property appropriated to a public use, but ~~such the~~ property ~~must~~ may not be taken unless for a more necessary public use than that to which it has already been appropriated;
- (d) franchises for roads, bridges, and ferries and all other franchises; but ~~such the~~ franchises ~~must~~ may not be taken unless for free highways, free bridges, railroads, or ~~other~~ another more necessary public use; or
- (e) ~~all rights-of-way~~ a right-of-way for any ~~and all the~~ public use mentioned in 70-30-102 and any ~~and all~~ structures and improvements ~~thereon~~ on the right-of-way, ~~and the~~ lands. The land held and used in connection ~~therewith~~ with the right-of-way must be subject to ~~be~~ being connected with, crossed, or intersected by any other right-of-way ~~of~~ improvements or structures ~~thereon~~ on the right-of-way. ~~They~~ The improvements or structures must also be subject to a limited use in common with the owner ~~thereof~~ of the improvements or structures when necessary⁷. ~~but such~~ However, the uses, crossings, intersections, and connections must be made in the manner that is most compatible with the greatest public benefit and least private injury.

(2) All classes of private property not enumerated may be taken for public use when ~~such the~~ taking is authorized by law."

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{Internal References to 70-30-103:
70-30-206 x}

Section 54. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken.

The following is a classification of the estates and rights in ~~lands~~ land subject to ~~be taken~~ taking for the public use:

(1) ~~such estate~~ estates or rights ~~as may be~~ that are necessary, up to and including a fee simple, when taken for:

(a) public buildings or grounds; ~~or for~~

(b) permanent buildings; ~~or for~~

(c) an outlet for a flow or a place for the deposit of
debris or tailings of a mine; ~~or for~~

(d) the mining and extracting of ores, metals, or minerals
when the ~~same~~ ores, metals, or minerals are owned by the
plaintiff condemnor but are located beneath or upon the surface
of property ~~where~~ for which the title to ~~said~~ the surface vests
in others; or

(e) ~~for~~ the underground storage of natural gas by a natural
gas public utility as defined in 82-10-301. When the
~~appropriation~~ taking is for the underground storage of natural
gas, all of the right, title, interest, and estate in the real
property and in the subsand stratum, formation, or reservoir ~~so~~
~~appropriated shall~~ taken must be determinable and for all
purposes ~~terminate~~ terminates upon abandonment or upon cessation
for the period of 1 year of the use for which the ~~same~~ property
was ~~appropriated, taken. and thereupon~~ Upon the abandonment or

cessation, the ownership of the residue of natural gas ~~therein~~ remaining ~~shall likewise vest in the reservoir vests~~ in the ~~then~~ current owners of ~~such~~ the surface property over the reservoir space.

(2) ~~such~~ the estate or rights in the surface ~~as~~ property that are necessary for a reservoir or dam and for the permanent flooding that results from the reservoir or dam, up to the edge of the maximum pool of the reservoir;

(3) an easement, leasehold, or other interest, for ~~so~~ as long as the interest is necessary for the purpose described in the complaint, or fee simple when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take ~~therefrom such~~ from the land any earth, gravel, stones, trees, and timber ~~as~~ that may be necessary for some public use."

{Internal References to 70-30-104: None.}

Section 55. Section 70-30-105, MCA, is amended to read:

"70-30-105. Appropriation Taking of underground natural gas storage reservoir -- effect on owner's right to drill. (1) The ~~appropriation taking~~ of any sand, stratum, or formation for use as an underground natural gas storage reservoir ~~shall be~~ is without prejudice to the rights of the owner or owners of ~~said lands~~ the land or of the oil, gas, or other mineral rights ~~therein in the land~~ to drill or bore through the sand, stratum, or formation ~~so appropriated~~ taken for use as an underground natural gas storage reservoir in order to explore for, produce,

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process, treat, or market any oil, gas, or other minerals that might be contained in ~~said lands~~ the land above or below the sand, stratum, or formation ~~so appropriated~~ taken.

(2) Any additional cost or expense required to be incurred in order to protect the underground natural gas storage reservoir against pollution and the escape of the gas ~~therefrom~~ from the reservoir by reason of ~~such~~ boring or drilling through ~~of~~ the sand, stratum, or formation used as ~~such~~ an underground natural gas storage reservoir ~~shall~~ must be paid by the persons, firm, or corporation ~~then~~ owning ~~such~~ the underground natural gas storage reservoir at the time of the boring or drilling."

{Internal References to 70-30-105: None.}

Section 56. Section 70-30-106, MCA, is amended to read:

"70-30-106. Eminent domain not to be used for coal mining in certain cases -- policy. (1) For the ~~following~~ reasons contained in this section, the state's power of eminent domain may not be exercised to mine and extract coal owned by the ~~plaintiff~~ condemnor located beneath the surface of property where the title to the surface is vested in others~~;~~.

~~(1)~~ (2) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals and affects large areas of land and large numbers of people.

~~(2)~~(3) In ~~many~~ certain areas of Montana ~~set forth~~ referred to in ~~(1) hereinabove~~ subsection (2), the title to the surface property is vested in an owner other than the mineral owner, and the surface owner is putting that surface property to a productive use, and it is the public policy of the state to encourage and foster ~~such that~~ productive use by such the surface owner, ~~and to.~~ To permit the mineral owner to condemn the surface ~~owner~~ owner's property is to deprive the surface owner of the right to use ~~his~~ the property in ~~a~~ the productive manner ~~as~~ he that the surface owner determines and is also contrary to public policy ~~as~~ set forth in subsection ~~(4)~~ (5).

~~(3)~~(4) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain.

~~(4)~~(5) It is the public policy of the state to encourage and foster diversity of land ownership, and the surface mining of coal and control of large areas of land by the surface coal mining industry would not ~~foster~~ promote public policy and further the public interest."

{Internal References to 70-30-106: None.}

Section 57. Section 70-30-107, MCA, is amended to read:

"70-30-107. Private roads. Private roads may be opened in the manner prescribed by this chapter, but in every case the necessity of the road and the amount of all damage to be sustained by the opening ~~thereof shall~~ of the road must be first determined by a jury, and ~~such the~~ amount of damages, together

with the expenses of the proceeding, ~~shall~~ must be paid by the person to be benefited."

{Internal References to 70-30-107: None.}

Section 58. Section 70-30-108, MCA, is amended to read:

"70-30-108. No abrogation of provisions relating to city or county roads. ~~Nothing in this code must~~ This chapter may not be construed to abrogate or repeal any statute providing for the taking of property in any county, city, or town, ~~or county~~ for road or street purposes."

{Internal References to 70-30-108: None.}

Section 59. Section 70-30-109, MCA, is amended to read:

"70-30-109. Temporary logging roads and banking grounds.

(1) In the event that a temporary roads road used for logging purposes or ~~grounds~~ land used for banking purposes ~~are opened or grounds is~~ taken, the ~~same shall include~~ taking includes only the temporary right to use the ~~same, and the~~ road or land. The order of condemnation for ~~said the road shall~~ or land must fix the length of time and the date from which ~~such the road shall must~~ be opened or land ~~shall must~~ be used, and at the expiration of ~~said that~~ period ~~so fixed~~, the right to use ~~said the~~ road or land ~~shall cease, ceases. and the~~ The use of ~~said the~~ road or land ~~shall revert reverts~~ to the party from whom the ~~same is~~ road or land was taken or to ~~his~~ that party's legal successor in interest, ~~provided, that no lands or grounds shall.~~ However, land may not be taken for ~~such~~ temporary logging roads or banking

grounds for a period of time longer than 5 years~~, and when~~ When taken for a period of time exceeding 1 year, the amount of damage for ~~such~~ each year ~~shall~~ must be fixed separately, and the amount fixed for each particular year must be paid on or before January 1 of each year~~, and in the event that~~ If the amount ~~so~~ fixed for any ~~one~~ 1 year is not paid as ~~herein~~ specified in this subsection, then ~~and in that event~~ the use of ~~such lands shall~~ revert the road or land reverts to the party from whom the ~~same~~ is road or land was taken or to ~~his~~ that party's successor in interest.

(2) In any suit for the opening of any temporary logging road or for the use of any ~~ground or~~ land for banking ~~purposes~~ grounds, the court ~~shall~~ may not finally order the opening of ~~such the~~ road or the right to use ~~such the~~ land ~~or ground~~ until the amount assessed as damages has been paid into court for the benefit of the party or parties owning or holding ~~such the road~~ or land.

(3) In the event that any ~~such~~ road or land taken or used as provided in this section is occupied by a lessee, ~~such the~~ lessee ~~shall~~ must be made a party to the suit, and the final decree of the court ~~shall~~ must apportion the amount of compensation received between the lessee and the owner of ~~such lands, the road or land.~~ such The decree being is subject to the right of appeal ~~of~~ by any party in interest."

{Internal References to 70-30-109: None.}

Section 60. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be taken -- greatest public good -- least private injury. In all cases ~~where~~ in which land is required for public use, the state or its agents in charge of ~~such the public~~ use may survey and locate the ~~same,~~ land to be used. ~~but it~~ The use must be located in the manner ~~which that~~ that will be most compatible with the greatest public good and the least private injury, and the location is subject to the provisions of 70-30-206. The state or its agents in charge of ~~such the~~ public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps ~~thereof,~~ of the land. ~~and such~~ The entry shall does not constitute ~~no~~ a cause of action in favor of the owners of the land except from injuries resulting from negligence, ~~wantonness,~~ or ~~malice~~ intentional acts. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of ~~his~~ the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of ~~such that~~ information furnish written notice to ~~such the listed~~ persons."

{Internal References to 70-30-110: None.}

Section 61. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, the ~~plaintiff must~~ condemnor shall show by a preponderance of the evidence that the public interest requires the taking based on the following

findings:

(1) ~~that~~ the use to which ~~it~~ the property is to be applied is a use authorized by law;

(2) ~~that~~ the taking is necessary to ~~such~~ the use;

(3) if already ~~appropriated to some~~ being used for a public use, that the public use ~~to~~ for which ~~it~~ the property is proposed to be ~~applied~~ used is a more necessary public use;

(4) ~~that~~ an effort to obtain the property interest sought to be ~~condemned~~ taken was made by submission of a written offer and ~~that such~~ the offer was rejected."

{ Internal References to 70-30-111:
70-30-203x 70-30-206x }

Section 62. Section 70-30-202, MCA, is amended to read:

"70-30-202. Jurisdiction and venue -- complaint and summons required. All proceedings under this chapter must be brought in the district court of the county in which the property or some part ~~thereof~~ of the property is situated. ~~They~~ A proceeding must be commenced by filing a complaint and issuing a summons ~~thereon~~. A summons served under this chapter must contain a notice to the ~~defendant~~ condemnee to file and serve an answer. Within 6 months from the date that the summons is served, unless the court shortens or ~~enlarges~~ lengthens that time for good cause, the court, sitting without a jury, shall commence ~~its~~ a trial on the issue of whether a preliminary condemnation order should be issued."

{ Internal References to 70-30-202: None. }

Section 63. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. (1) The complaint for condemnation must ~~allege~~ contain:

~~(1)~~(a) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought to be taken, who ~~must be styled~~ is the plaintiff;

~~(2)~~(b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants ~~of the property~~ of record of the property sought to be taken, if known, or a statement that they are unknown, who ~~must be styled~~ are the defendants;

~~(3)~~(c) a statement of the right of the plaintiff to take property for public use;

~~(4)~~(d) statements of each of the facts necessary to be found in 70-30-111; and

(e) a description of each interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

~~(5)~~(2) ~~if~~ If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show the

location, general route, and termini and must be accompanied with a map ~~thereof~~ of the route, so far as the ~~same~~ route is involved in the action or proceeding⁷.

~~(6) a description of each interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.~~

~~(7)(3) (a) if~~ If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be ~~appropriated~~ taken, in addition to the items listed in subsection (1), the complaint must include a description ~~thereof~~ of the reservoir and of the land in which ~~it~~ the reservoir is alleged to be contained and a description of all other property and rights sought to be ~~appropriated~~ taken for use in connection with the ~~appropriation of the right to store natural gas in and withdraw natural gas from~~ such the reservoir.

(b) In addition, the complaint ~~shall~~ must state facts showing that:

(i) the ~~underground~~ reservoir is ~~one~~ subject to ~~appropriation~~ being taken by the plaintiff;

(ii) ~~also stating that~~ the underground storage of natural gas in the land sought to be ~~appropriated~~ taken is in the public interest;

~~(iii) that the underground~~ reservoir is suitable and practicable for natural gas storage; and

~~(iv) that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder~~ taken; and

~~(v) a statement that the rights and property sought to be appropriated~~ taken are not prohibited by law, from being taken.

~~(c) and in addition, the~~ The complaint must be accompanied by a certificate from the board of oil and gas conservation as ~~set forth~~ provided in 82-10-304."

{Internal References to 70-30-203:
70-30-206 x}

Section 64. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) ~~The~~ In a condemnation proceeding, the court ~~has power~~ to ~~may~~:

(a) regulate and determine the place and manner of:

(i) making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e); and

(ii) ~~of the~~ occupying ~~of~~ canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) limit the interest in real property sought to be ~~appropriated~~ taken if in the opinion of the court the interest sought is not necessary.

(2) If the court finds and concludes from the evidence presented that the public interest requires the taking of ~~such~~ an

interest in real property and that the ~~plaintiff~~ condemnor has met ~~his~~ the burden of proof under 70-30-111, ~~it must forthwith make and the court shall~~ enter a preliminary condemnation order providing that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(3) (a) If the property sought to be ~~appropriated~~ taken is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of ~~it~~ the property for ~~such that~~ use has been proved by ~~plaintiff~~ the condemnor based upon substantial evidence, the order of the court ~~shall~~ must direct the condemnation commissioners to ~~ascertain and~~ determine the amount to be paid by the ~~plaintiff~~ condemnor to each person for ~~his~~ each person's interest in the property sought to be ~~appropriated~~ taken for use as ~~such an~~ an underground natural gas storage reservoir ~~and/or as~~.

(b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the commissioners to determine the annual rental for:

(i) the use of ~~such the~~ underground natural gas storage reservoir;

(ii) and for the use of so much of the surface as is required in the operation of the ~~underground gas storage~~ reservoir and for the use in connection with the creation, operation, and maintenance ~~thereof~~ of the reservoir; and

(iii) for all the native gas contained in ~~said the~~ the reservoir ~~as compensation and damages by reason of the appropriation of such property~~. However, the amount to be paid for ~~such the~~ the native

gas ~~and all thereof shall be no~~ may not be less than the market value of ~~such the~~ gas.

(4) The court shall appoint three persons, qualified and recommended as experts ~~and recommended as such~~ by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by ~~plaintiff the condemnor~~ to each person for ~~his~~ each person's interest in the property sought to be ~~appropriated, taken, and~~ the ~~The~~ fees and expenses of ~~such persons shall be~~ the experts are chargeable as costs of the proceedings to be paid by the ~~plaintiff condemnor~~.

~~(4)~~(5) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give ~~such the~~ proceedings expeditious and priority consideration. The preliminary condemnation proceeding ~~shall must~~ be tried by the court sitting without a jury."

{ Internal References to 70-30-206:
70-30-110 x }

Section 65. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of condemnation commissioners -- affidavit -- compensation. (1) Within 30 days of entry of a preliminary condemnation order, the ~~defendant~~ condemnee shall file a statement of ~~his~~ the condemnnee's claim of just

compensation. If within 20 days of service of ~~defendant's~~ the condemnee's claim ~~plaintiff~~ the condemnor fails to accept the claim, the court ~~must~~ shall appoint condemnation commissioners, ~~and the~~ The commission hearing may be waived by written consent of both parties, in which case the proceeding ~~shall~~ must be conducted in the district court as if the case had been appealed from an award by ~~such~~ the commissioners.

(2) The court ~~must thereupon~~ shall appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of ~~such~~ the commissioners ~~shall~~ must be nominated by the ~~party or parties~~ plaintiff condemnor. One of ~~such~~ the commissioners ~~shall~~ must be nominated by the ~~party or parties~~ defendant condemnnee. The third commissioner ~~shall be the chairman~~ is the presiding officer and ~~shall~~ must be nominated by the two commissioners previously nominated. However, if ~~said~~ the two commissioners fail to make ~~such~~ the choice at the time of their appointment, then ~~such~~ the nomination ~~shall~~ must be made by the presiding judge.

(3) Each commissioner ~~shall possess the following qualifications:~~

(a) ~~that he is possessed of~~ must have sufficient knowledge of the English language;

(b) ~~that he is~~ must be a resident of a county within the judicial district in which the action is pending;

(c) ~~that he is not~~ may not be related within the sixth degree of consanguinity to any party; and

(d) ~~that he does~~ may not stand in the relation of guardian

and ward, master and servant, debtor and creditor, ~~or~~ principal and agent, ~~or~~ partner or surety ~~as~~ to any party.

(4) At the time of ~~such~~ the meeting and nominations, there ~~shall~~ must be filed with the court by each nominating party or judge an affidavit of the person ~~so~~ nominated stating substantially ~~as follows~~ the following:

(a) that ~~he~~ the person has not formed ~~no~~ an unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the ~~plaintiff's~~ condemnor's offer for the lands and improvements of the ~~defendants~~ condemnee;

(b) that ~~he~~ the person has no enmity against or bias in favor of any party and has not discussed, communicated, ~~or~~ overheard, ~~or~~ read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, ~~he~~ the person is willing to serve and will ~~well and truly~~ try the issues of compensation and render a ~~true~~ decision according to the evidence and in compliance with the instructions of the court; and

(d) that ~~he~~ the person will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

(5) The court shall specify the compensation of the condemnation commissioners, which may not exceed \$250 ~~a~~ for each hearing day, including expenses. The ~~condemning party~~ condemnor

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shall pay the compensation of the commissioners ~~nominated~~."

{Internal References to 70-30-207:

70-30-301 x 70-30-311 x 70-30-311x }

Section 66. Section 70-30-301, MCA, is amended to read:

"70-30-301. Hearing -- judge to preside -- determinations by condemnation commissioners. (1) ~~Immediately upon nomination and appointment of commissioners under 70-30-207, the same shall proceed to~~ The condemnation commissioners shall meet at the time and place stated in the order appointing them, ~~which~~ The meeting time shall may not be more than 10 days after the order of ~~appointing appointment,~~ and proceed to The commissioners shall examine the lands sought to be ~~appropriated~~ taken. At a time appointed by the judge and within ~~said~~ the 10-day period, ~~they~~ the commissioners shall hear the allegations and evidence of all persons interested in each ~~of the several parcels~~ parcel of land.

(2) ~~Such~~ The hearing ~~shall~~ must be attended by and presided over by the presiding judge, who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) (a) At the conclusion of the ~~aforesaid~~ hearing, the ~~court or~~ judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, based solely upon ~~the basis of said~~ their examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the ~~following~~ appropriate findings provided for in subsections (3)(b) through (3)(d).

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~~(a)~~(b) The commissioners shall determine the current fair market value of the real property sought to be ~~appropriated~~ taken and all improvements ~~thereon~~ pertaining to the ~~realty~~ real property and of each ~~and every~~ separate estate and interest ~~therein~~ in the real property and improvements. If ~~it~~ the real property consists of different parcels, the current fair market value of each parcel and each estate or interest ~~therein~~ in the real property must be separately assessed.

~~(b)~~(c) (i) ~~if~~ If the property sought to be ~~appropriated~~ taken constitutes only a part of a larger parcel, the commissioners shall determine the depreciation in current fair market value ~~which that~~ will accrue to the ~~portion not sought to be condemned~~ remaining parcel by reason of its ~~severance from the portion sought to be condemned~~ the condemnation and the construction of the improvements in the manner proposed by the ~~plaintiff, condemnor.~~

~~(c)~~(ii) ~~separately,~~ The commissioners shall also determine how much the ~~portion not sought to be condemned~~ remaining parcel and each estate or interest ~~therein~~ in the remaining parcel will be benefited, if at all, by the construction of the improvements proposed by the ~~plaintiff, condemnor.~~ ~~and if~~ If the benefit ~~shall be~~ is equal to the amount assessed under subsection ~~(3)(b)~~ (3)(c)(i), the ~~owner of the parcel shall be allowed no compensation except~~ compensation to the condemnee is limited to the value of the portion taken, ~~but~~ However, if the ~~benefits shall be~~ benefit is less than the amount assessed under subsection ~~(3)(b)~~ (3)(c)(i), the ~~former~~ shall benefit to the

condemnee must be deducted from the ~~latter~~, amount assessed under subsection (3)(c)(i) and the remainder ~~shall be~~ is the only amount allowed in addition to the current fair market value~~7~~.

(d) ~~if~~ If the property sought to be ~~condemned be~~ taken is for a railroad, the commissioners shall also determine the cost of good and sufficient fences along the line of ~~such~~ the railroad and the cost of cattle guards where fences may cross the line of ~~such~~ the railroad.

(4) ~~Where~~ When there are two or more estates or divided interests in property sought to be ~~condemned~~ taken, the ~~plaintiff~~ condemnor is entitled to have the amount of the award for ~~said~~ the property first determined, ~~as hereinbefore stated~~, as between ~~plaintiff~~ the condemnor and all ~~defendants~~ condemnees claiming any ~~interests therein~~ interest in the property. ~~Thereafter in~~ In the same proceeding, the respective rights of each of ~~such~~ defendants the condemnees in and to the total award ~~shall~~ must be determined by the commissioners, under supervision and instruction of the court, and the award must be apportioned accordingly."

{Internal References to 70-30-301: None.}

Section 67. Section 70-30-302, MCA, is amended to read:

"70-30-302. Assessing compensation -- date and measure -- interest. (1) For the purpose of assessing compensation, the right ~~thereto shall be deemed to compensation is considered~~ to have accrued at the date of the service of the summons, and ~~its~~ the property's current fair market value as of that date ~~shall be~~

is the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This ~~shall~~ subsection may not be construed to limit the amount of compensation payable by the department of transportation under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order ~~be~~ is made ~~letting~~ allowing the plaintiff ~~into~~ condemnor to take possession, as provided in 70-30-311, the full amount finally awarded ~~shall~~ must draw interest at the rate of 10% ~~per annum~~ a year from the date of the service of the summons to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if an appeal is filed, ~~to~~ the date of final decision by the supreme court; or

(b) the date on which the ~~property owner~~ condemnee withdraws from the court the full amount finally awarded.

(3) If the ~~property owner~~ condemnee withdraws from the court a fraction of the amount finally awarded, interest on ~~such~~ that fraction ~~shall cease~~ ceases on the date it is withdrawn but interest on the remainder of the amount finally awarded ~~shall~~ continue continues to the earlier of the ~~aforsaid~~ defined referred to in subsections (2)(a) and (2)(b) ~~of this section~~ until the full amount is withdrawn from the court.

(4) None of the amount finally awarded ~~shall draw~~ draws interest after the date on which the right to appeal to the Montana supreme court expires.

(5) ~~No improvements~~ Improvements put upon the property subsequent to the date of the service of summons ~~shall~~ may not be included in the assessment of compensation or depreciation in current fair market value, ~~nor shall the same~~ and may not be used as the basis of computing ~~such~~ compensation or depreciation."

{Internal References to 70-30-302:
60-4-108 x}

Section 68. Section 70-30-303, MCA, is amended to read:

"70-30-303. Final report and award of condemnation commissioners -- procedure on failure to agree. (1) The report of the condemnation commissioners ~~shall~~ must be made on ~~such~~ forms ~~as that~~ are provided for their use by ~~authority of~~ the court. The report must be filed within 10 days after the completion of the hearing or within ~~such~~ any additional time ~~as~~ allowed by the judge upon a clear showing of necessity. ~~and~~ The report must be filed with the clerk of court. The clerk shall notify the parties ~~interested~~ that the report has been filed, ~~which~~ The notice, together with a ~~true~~ copy of the report, must be served upon all the parties ~~interested~~ in the same manner as a summons.

(2) A concurrence of two commissioners is necessary to the making of a final report or award as to any parcel of property or interest ~~therein~~ in a parcel of property. If ~~no~~ two of the commissioners are ~~able~~ unable to agree as to the amount of any award, ~~they~~ the commissioners shall report the fact to the judge or court within the time ~~herein~~ specified in subsection (1) and the court shall ~~forthwith~~ impanel and appoint new commissioners

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~~as herein provided,~~ which The new commissioners shall proceed as provided ~~herein~~ in this part to determine any award upon which the previous commissioners failed to agree.

(3) The report of the commissioners ~~shall also state~~ must include a statement of the number of days or portions ~~thereof~~ consumed of days worked by the commissioners in performance of their duties ~~as prescribed herein.~~"

{Internal References to 70-30-303: None.}

Section 69. Section 70-30-304, MCA, is amended to read:

"70-30-304. Appeal to district court from assessment of condemnation commissioners. (1) ~~An~~ Any party may appeal from any assessment made by the condemnation commissioners ~~may be taken and prosecuted~~ in the court where the report of ~~said the~~ commissioners is filed ~~by any party interested.~~ Such ~~The~~ appeal must be taken within ~~the period of~~ 30 days after the service upon ~~appellant the parties~~ of the notice of the filing of the award, ~~by the service of~~ The appealing party shall serve notice of ~~such the~~ appeal upon the opposing party or ~~his~~ the opposing party's attorney ~~in such proceedings and the filing of the same shall file the notice of appeal~~ in the district court ~~wherein in which~~ the action is pending~~,~~ ~~and the same shall be brought on for trial~~ The appeal must be tried upon the same notice and in the same manner as other civil actions~~,~~ ~~and unless~~ Unless a jury ~~shall be~~ is waived by the consent of all parties to ~~such the~~ appeal, the ~~same shall~~ appeal must be tried by a jury, ~~and the.~~ The amount to which ~~appellant the condemnee~~ may be entitled, by

reason of the ~~appropriation taking~~ of ~~his~~ the condemnee's property, ~~shall must~~ be reassessed ~~upon the same principle as~~ ~~hereinbefore~~ as prescribed in this part for the assessment of ~~such that~~ amount by the commissioners.

(2) Upon any verdict or assessment by the commissioners becoming final, judgment ~~shall must~~ be entered declaring that upon payment of ~~such the amount of the~~ verdict or assessment, together with the interests and costs allowed by law, if any, the condemnor has the right to construct and maintain the ~~highway, railroad, or other public work or improvement~~ public use project and to take, use, and appropriate the property described in ~~such the~~ verdict or assessment for the use and purposes for which ~~said land the property~~ has been ~~condemned taken~~. ~~shall, as against the parties interested in such verdict or assessment, be and~~ The rights granted in the verdict or assessment remain in the plaintiff condemnor and ~~his or its~~ the condemnor's heirs, successors, or assigns forever.

(3) ~~In case~~ If the party appealing from the award of the commissioners ~~in any proceeding, as aforesaid, shall~~ does not succeed in changing to ~~his~~ the appellant's advantage the amount finally awarded in ~~such the~~ proceeding, ~~he shall~~ the appellant may not recover the costs of ~~such the~~ appeal, but all the costs of the appellee ~~upon such in the~~ appeal ~~shall must~~ be taxed against and recovered from the appellant, ~~provided, that~~ However, upon the trial of ~~such the~~ appeal, the plaintiff appellant may contest the right of any party ~~or parties thereto~~ to any of the property mentioned and set forth or involved in

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~~said the~~ appeal, ~~which that~~ was located after the preliminary survey of any ~~such~~ highway or railroad, seeking to condemn ~~its~~ a right-of-way ~~under and~~ pursuant to the provisions of this chapter, ~~provided such~~ if the condemnation proceedings are begun within 1 year after ~~such the~~ preliminary survey."

{Internal References to 70-30-304: None.}

Section 70. Section 70-30-305, MCA, is amended to read:

"70-30-305. Condemnor to make offer upon appeal -- award of expenses of litigation. (1) The condemnor shall, within 30 days after an appeal is perfected from the condemnation commissioner's award or report or not more than 60 days after the waiver of appointment of ~~condemnation~~ commissioners, submit to the condemnee a written final offer of judgment for the property sought to be ~~condemned~~ taken, together with the accrued necessary expenses of the condemnee ~~then accrued~~. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service ~~thereof~~ of the acceptance, and ~~thereupon~~ judgment ~~shall~~ must be entered. An offer not accepted ~~shall be deemed~~ is considered withdrawn and evidence ~~thereof~~ of the offer is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the ~~private property owner~~ condemnee prevails by receiving an award in excess of the final offer of the condemnor, the court shall award

necessary expenses of litigation to the condemnee."

{Internal References to 70-30-305:
70-30-306 x}

Section 71. Section 70-30-306, MCA, is amended to read:

"70-30-306. Necessary expenses of litigation defined. (1)

Necessary expenses of litigation as authorized by 70-30-305 mean reasonable and necessary attorney fees, expert witness fees, exhibit costs, and court costs.

(2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's services in the county in which the trial is held. Reasonable and necessary attorney fees ~~shall~~ must be computed on an hourly basis and may not be computed on the basis of any contingent fee contract ~~entered into after July 1, 1977.~~

(3) Reasonable and necessary expert witness fees may not exceed the customary rate for the services of a witness of ~~such~~ that expertise in the county in which the trial is held."

{Internal References to 70-30-306: None.}

Section 72. Section 70-30-307, MCA, is amended to read:

"70-30-307. When payment of compensation to be made -- deposit of bond. ~~The plaintiff must~~ In a proceeding for condemnation for a railroad, the condemnor shall within 30 days after final judgment pay the sum of money assessed but may at the time of or before the payment elect to build ~~the~~ any required fences and cattle guards, ~~and, if he so elect,~~ A condemnor who

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elects to build the required fences and cattle guards shall execute to the ~~defendant~~ condemnee a bond with sureties to be approved by the court, in double the assessed cost of the ~~same fences and cattle guards, to build such~~ conditioned upon building the fences and cattle guards within 8 months from the time the railroad is built on the land taken. ~~and, if such~~ If the bond be is given, the condemnor need is not required to pay the cost of such the fences and cattle guards. In an action on ~~such the~~ bond, the ~~plaintiff~~ condemnee may recover reasonable ~~attorney's~~ attorney fees."

{ Internal References to 70-30-307:
70-30-309x }

Section 73. Section 70-30-308, MCA, is amended to read:

"70-30-308. How payment made -- execution or annulment for nonpayment. (1) Payment may be made to the ~~defendants entitled thereto~~ condemnee, or the money may be deposited in court for the ~~defendants~~ condemnee and be distributed ~~to those entitled thereto pursuant to the assessment or judgment.~~ However, at the option of the ~~defendants~~ condemnee, payments may be made:

(a) on an annual basis, ~~utilizing~~ using the installment contract method; or

(b) if other land is reasonably available and the ~~plaintiff~~ condemnor consents, by means of a land exchange between the ~~defendants~~ condemnee and ~~plaintiffs~~ condemnor if the land to be provided by the ~~plaintiffs~~ condemnor in the exchange is of equal or more value than the land being condemned.

(2) If the money ~~be~~ is not ~~so~~ paid or deposited, the ~~defendants~~ condemnee may have execution as in civil cases, and if the money cannot be ~~made on execution~~ executed upon, the court, upon a showing to that effect, ~~must~~ shall set aside and annul the entire proceedings and restore possession of the property to the ~~defendant~~ condemnee if possession has been taken by the plaintiff condemnor."

{ Internal References to 70-30-308:
70-30-309x }

Section 74. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents -- vesting upon filing. (1) When payments have been made and the bond, if appropriate, has been given, ~~if the plaintiff elects to give one~~, as required by 70-30-307 and 70-30-308, the court ~~must~~ shall make a final order of condemnation~~7~~, ~~which~~ The order must describe the property condemned and the purposes of ~~such~~ the condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and ~~thereupon~~ upon filing, the property described ~~therein shall vest~~ in the order vests in the plaintiff condemnor for the purposes ~~therein~~ specified in the order."

{ Internal References to 70-30-309: None. }

Section 75. Section 70-30-310, MCA, is amended to read:

"70-30-310. New proceedings to cure defective title. If the

title to property attempted to be acquired is found to be defective from any cause, the ~~plaintiff~~ condemnor may again institute proceedings to acquire the ~~same~~ property, as prescribed in this chapter ~~prescribed~~."

{Internal References to 70-30-310: None.}

Section 76. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting ~~plaintiff~~ condemnor in possession. (1)

At any time after the filing of the preliminary condemnation order ~~or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings~~ and while it retains jurisdiction, the court upon application of the ~~plaintiff shall have power to~~ condemnor may make an order that, upon payment into court ~~for the defendant entitled thereto~~ of the amount of compensation claimed by the ~~defendant~~ condemnee in ~~his~~ the condemnee's statement of claim of just compensation under 70-30-207 or the amount assessed either by the commissioners or by the jury, ~~as the case may be~~, the ~~plaintiff be~~ condemnor is authorized:

(a) if already in possession of the property of ~~such defendant~~ the condemnee that is sought to be ~~appropriated taken~~, to continue in ~~such~~ possession; or

(b) if not in possession, to take possession of ~~such~~ the property and use and possess the ~~same~~ property during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the

~~plaintiff~~ condemnor on account ~~thereof be~~ of the possession are stayed until ~~such~~ that time.

(2) If the ~~defendant~~ condemnee fails to file a statement of claim of just compensation within the time specified in 70-30-207, the ~~plaintiff~~ condemnor may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a ~~plaintiff's~~ condemnor's payment into court ~~shall~~ must be made within 10 days of receipt of the ~~defendant's~~ condemnee's statement of claim.

(3) However, ~~where~~ when an appeal is taken by ~~such~~ defendant the condemnee, the court may, ~~in its discretion,~~ require the ~~plaintiff~~ condemnor before continuing or taking ~~such~~ possession, in addition to paying into court the amount assessed, to give a bond or undertaking with sufficient sureties ~~to be~~ approved by the court and ~~to be~~ in ~~such sum as~~ an amount that the court may direct, conditioned to pay the ~~defendant~~ condemnee any additional damages and costs ~~over and~~ above the amount assessed, which ~~it may~~ is finally ~~be~~ determined as the amount that ~~defendant~~ the condemnee is entitled to for the ~~appropriation~~ taking of the property, and all damages ~~which defendant~~ that the condemnee may sustain if for any cause ~~such~~ the property ~~shall~~ is not ~~be~~ finally taken for public ~~uses~~ use.

(4) The amount assessed by the commissioners or by the jury on appeal, ~~as the case may be, shall be taken and~~ is considered, for the purposes of this section, ~~and~~ until reassessed or changed in the further proceedings, as just compensation for the property ~~appropriated, taken.~~ However, the ~~plaintiff~~ condemnor, by

payment into court of the amount claimed in the answer or the amount assessed or by giving security as ~~above~~ provided in subsection (3), ~~shall~~ may not be ~~thereby~~ prevented or precluded from appealing from ~~such~~ the assessment but may appeal in the same manner and with the same effect as if ~~no~~ money had not been deposited or security had not been given.

(5) (a) ~~In~~ Subject to subsection (5)(b), in all cases ~~where~~ in which the ~~plaintiff~~ condemnor deposits the amount of the assessment and continues in possession or takes possession of the property, as ~~herein~~ provided in this section, the ~~defendant~~ entitled thereto condemnee, if there ~~be~~ is no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money ~~so~~ deposited, ~~and shall not by such~~ The demand or receipt ~~be barred or precluded from his~~ may not preclude the condemnee's right of appeal from ~~such~~ the assessment, ~~but may, notwithstanding, take and prosecute his appeal from such assessment; provided that~~ However, if the amount of ~~such~~ the assessment is finally reduced on appeal by either party, ~~such defendant~~ the condemnee who has received all or any part of the amount deposited ~~shall be~~ is liable to the ~~plaintiff~~ condemnor for any excess of the amount ~~so~~ received ~~by him~~ over the amount finally assessed, with legal interest on ~~such~~ the excess from the time ~~such defendant~~ the condemnee received the money deposited, ~~and the same~~ The excess, plus interest, may be recovered by a civil action, ~~and provided, further, that upon~~ Upon any appeal from an assessment by the commissioners to a jury, the jury may ~~find a less as well as an~~

~~equal or greater amount than that assessed by the commissioners,~~
~~and provided, further, that the~~ make a finding for any amount
that it considers appropriate.

(b) The court ~~shall~~ may not order the delivery to any
~~defendant~~ condemnee of more than 75% of the money deposited on
~~his~~ the condemnee's account except upon posting of bond by ~~such~~
~~defendant~~ the condemnee equal to the amount in excess of 75%,
with sureties to be approved by the court, to repay to the
~~plaintiff such~~ condemnor amounts withdrawn ~~as~~ that are in excess
of ~~his~~ the condemnee's final award in the proceedings."

{Internal References to 70-30-311:
70-30-302 x}

Section 77. Section 70-30-312, MCA, is amended to read:

"70-30-312. Appeal to supreme court. (1) ~~The plaintiff or~~
~~defendant or any~~ Any party interested in the proceedings can
appeal to the supreme court from any finding or judgment made or
rendered under this chapter, as in other cases.

(2) ~~Such~~ An appeal does not stay any further proceedings
under this chapter, except that the district court on motion or
ex parte may grant a stay for ~~such~~ a period of time and under
~~such~~ conditions ~~as~~ that the court ~~deems~~ considers proper."

{Internal References to 70-30-312: None.}

Section 78. Section 70-30-314, MCA, is amended to read:

"70-30-314. Weed control responsibility. The ~~plaintiff~~
condemnor, upon taking possession of the land, is responsible for

the control and destruction of noxious weeds on ~~such~~ the land until natural grasses have taken over the property and noxious weeds have ceased to exist."

{Internal References to 70-30-314: None.}

Section 79. Section 70-30-315, MCA, is amended to read:

"70-30-315. Proration of taxes. The ~~plaintiff shall~~ condemnor must be assessed ~~his~~ the condemnor's pro rata share of taxes for the land being ~~condemned~~ taken as of the date of possession or summons, whichever occurs first. The ~~plaintiff shall~~ condemnor must be assessed for all taxes accruing after the date of possession or summons, whichever occurs first."

{Internal References to 70-30-315: None.}

Section 80. Section 70-30-321, MCA, is amended to read:

"70-30-321. Sale of property acquired for public use when use abandoned -- procedure. (1) Except as provided in subsection (3), whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons ~~such~~ the public use and places ~~such~~ the property interest for sale, the seller may sell the interest to the highest bidder at public auction.

(2) ~~In the event~~ If the seller decides to sell an interest in real property as set forth in subsection (1), ~~he~~ the seller shall publish notice of the public sale in a newspaper published in the county in which the real property ~~interest~~ is located once a week for 4 successive weeks. Sale ~~shall~~ must be held in the

county where the real property ~~interest~~ is located. The notice of sale ~~shall~~ must contain the information required by 77-2-322.

(3) When an interest other than a fee simple interest in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or ~~his~~ or the original owner's successor in interest."

{ Internal References to 70-30-321:
70-30-322x }

Section 81. Section 70-30-322, MCA, is amended to read:

"70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or the owner's successor in interest, if there is a successor in interest, ~~the owner or his successor in interest shall~~ must be notified by the seller by certified mail and ~~shall have~~ has a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering ~~therefor~~ an amount of money equal to the highest bid received for the interest at the sale. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If ~~no~~ bids are not received by the seller and the optionholder indicates in writing to the seller that ~~he~~ the optionholder wishes to exercise the option, the seller shall have

the real property interest appraised and sell the interest at that price to the optionholder.

(3) When an interest other than a fee simple interest in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or ~~his~~ the original owner's successor in interest."

{Internal References to 70-30-322: None.}

Section 82. Section 70-31-102, MCA, is amended to read:

"70-31-102. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Agency" means ~~any~~ a department, agency, or instrumentality of the state of Montana or of a political subdivision of the state, ~~any~~ a department, agency, or instrumentality of two or more states or two or more political subdivisions of the state or of two or more states, and ~~any~~ a person who has the authority to acquire property by eminent domain ~~under state law~~ as provided in Title 70, chapter 30.

(2) "Appraisal" means a written statement, independently and impartially prepared by a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specified date and supported by the presentation and analysis of relevant market information.

(3) "Average annual net earnings" means one-half of any net earnings of a business or farm operation, before federal and

state income taxes, during the 2 ~~taxable~~ tax years immediately preceding the ~~taxable~~ tax year in which the business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during any other period that the acquiring agency determines to be more equitable for establishing earnings and includes any compensation paid by the business or farm operation to the owner, ~~his~~ the owner's spouse, or ~~his~~ the owner's dependents during the period.

(4) "Business" means any lawful activity, ~~excepting~~ except a farm operation, conducted:

(a) primarily for the purchase, sale, lease, and rental of personal and real property and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) primarily for the sale of services to the public;

(c) primarily by a nonprofit organization; or

(d) solely for the purposes of paying moving or related expenses, ~~for assisting~~ to assist in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the ~~above~~ activities included as a business are conducted.

(5) (a) "Displaced person" means:

(i) any person who moves from real property or moves ~~his~~ that person's personal property from real property:

(A) as a direct result of a written notice of intent to acquire or by the acquisition of the real property, in whole or in part, for a program or project undertaken by a displacing agency for which federal financial assistance will be available to pay all or any part of the cost; or

(B) on which ~~he~~ the person is a residential tenant or conducts a small business, farm operation, or a business defined in subsection (4)(d), as a direct result of rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent and for which federal financial assistance will be available to pay all or any part of the cost;

(ii) any person who, for purposes of providing moving and related expenses or relocation advisory services only, moves from real property or moves ~~his~~ that person's personal property from real property as a direct result of:

(A) a written notice of intent to acquire or as a direct result of the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(B) the rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent.

(b) The term "displaced person" does not include a person who:

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(i) has been determined, according to criteria established by the agency, to be either unlawfully occupying the displacement dwelling or to have been occupying the dwelling for the purpose of obtaining assistance under this part; or

(ii) occupies property owned by the agency on a short-term rental basis or for a period subject to termination when the property is needed for the program or project and who was not an occupant of the property at the time it was acquired by the agency.

(6) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing ~~such~~ agricultural products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" or as that act may be amended.

(8) "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

(9) "Person" means any individual, partnership, corporation, or association."

{Internal References to 70-31-102: None.}

Section 83. Section 70-31-104, MCA, is amended to read:

"70-31-104. New rights and powers not created. (1) ~~Nothing~~

~~in this~~ This chapter ~~shall~~ may not be construed as creating, in any condemnation proceedings brought under the power of eminent domain as provided in Title 70, chapter 30, any element of value or damage that is not in existence immediately prior to July 1, 1971.

(2) ~~Nothing in this~~ This chapter ~~shall~~ may not be construed as, directly or indirectly, granting any new or additional power of eminent domain."

{Internal References to 70-31-104: None.}

Section 84. Section 70-31-105, MCA, is amended to read:

"70-31-105. Duplication of eminent domain payments not intended. ~~No~~ A payment or assistance provided for in this chapter ~~shall~~ may not be required to be made by an agency if the displaced person receives a payment required ~~by the laws of eminent domain which~~ under Title 60, chapter 4, or Title 70, chapter 30, that is determined by the agency to have substantially the same purpose and effect as ~~such~~ a payment under this chapter."

{Internal References to 70-31-105: None.}

Section 85. Section 70-31-301, MCA, is amended to read:

"70-31-301. Appraisal, negotiation, and other condemnation policies mandated. An agency ~~which~~ that acquires real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of ~~such~~ the program or project) shall comply with the following policies:

(1) The agency shall make every reasonable effort to ~~acquire~~ expeditiously acquire real property by negotiation.

(2) Real property ~~shall~~ must be appraised before the initiation of negotiations, and the owner or ~~his~~ or the owner's designated representative ~~shall~~ must be given an opportunity to accompany the appraiser during ~~his~~ the appraiser's inspection of the property. The head of the agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, an amount ~~shall~~ must be established ~~which~~ that it is reasonably believed ~~is~~ to be just compensation ~~therefor~~ for the property or interest taken, and ~~such~~ that amount ~~shall~~ must be offered for the property. ~~In no event shall such~~ The amount may not be less than the approved appraisal of the fair market value of ~~such~~ the property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which ~~such~~ the property is acquired or by the likelihood that the property would be acquired for ~~such~~ the improvement, other than ~~that~~ an amount due to physical deterioration within the reasonable control of the owner, ~~shall~~ must be disregarded in determining the compensation for the property. The owner of the real property to be acquired ~~shall~~ must be provided with a written statement of and summary of the basis for the amount established as just compensation. ~~Where~~ When appropriate, the just compensation for the real property acquired and for damages to remaining real property ~~shall~~ must be

separately stated.

(4) ~~No~~ An owner ~~shall~~ may not be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of ~~such~~ the property or the amount of the award of compensation in the condemnation proceeding of ~~such~~ the property.

(5) The construction or development of a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) ~~shall~~ must be ~~so~~ scheduled so that, to the greatest extent practicable, ~~no a~~ person lawfully occupying real property ~~shall be~~ is not required to move from a dwelling (assuming a replacement dwelling will be available) or to move ~~his~~ the person's business or farm operation without at least 90 days' written notice of the date by which ~~such a~~ move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required ~~shall~~ may not exceed the fair rental value of the property to a short-term occupier.

(7) ~~In no event shall the~~ The time of condemnation may not be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner may not be deferred or any other action coercive in nature may not be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings ~~shall~~ must be instituted as provided in Title 70, chapter 30. The acquiring agency ~~shall~~ may not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of ~~his~~ the owner's real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the uneconomic remnant ~~shall~~ must be made.

(10) A person whose real property is being acquired may, after being fully informed of ~~his~~ the person's right to receive just compensation, donate to an agency the property, any interest in the property, or any compensation received for the property."

{Internal References to 70-31-301: None.}

Section 86. Section 70-31-311, MCA, is amended to read:

"70-31-311. Relocation payments and assistance. For any project that results in the displacement of a person from ~~his~~ the person's home, business, or farm and for which federal financial assistance may be available to pay all or any part of the cost of displacement, an entity of the state or any public or private entity that has the authority to acquire property by eminent domain under ~~state law~~ Title 60, chapter 4, or Title 70, chapter 30, is authorized to provide relocation assistance and to make relocation payments to the full extent permitted by the federal relocation assistance law, 42 U.S.C. 4601, et seq., as amended. The entity is authorized to do what may be necessary or required

to obtain for property owners the full benefit of federal relocation assistance, including the adoption of methods of administration ~~as~~ that may be required by federal law or rules to carry out the operation of relocation assistance."

{Internal References to 70-31-311: None.}

Section 87. Section 70-32-216, MCA, is amended to read:

"70-32-216. Tracing homestead proceeds. (1) If property or a part ~~thereof~~ of property that could have been claimed as an exempt homestead has been sold or taken by condemnation, as provided in Title 60, chapter 4, or Title 70, chapter 30, or has been lost, damaged, or destroyed and the owner has been indemnified for ~~it~~ the property, ~~he~~ the owner is entitled for 18 months to exemption of the proceeds that are traceable.

(2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor."

{Internal References to 70-32-216: None.}

Section 88. Section 75-10-715, MCA, is amended to read:

"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions. (1) Except as provided in 75-10-742 through 75-10-752, notwithstanding any other provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the following persons are jointly and severally liable for a release or

threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility

that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

(5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required;

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership,

authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that the person:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person prevented the

person from taking timely remedial action; or

(g) the person transported only household refuse, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation pursuant to Title 70, chapter 30.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that the person has satisfied the

requirements of subsection (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another

person without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

(e) Subsection (6) does not affect the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

(7) A person has an exclusion and is not liable under this section if:

(a) the person generated or disposed of only household refuse, unless the person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse;

(b) the person owns or operates real property where hazardous or deleterious substances have come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the person's property, provided that the following conditions are met:

(i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's or operator's property does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

(ii) the person who caused, contributed to, or exacerbated

the release or threatened release of any hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department provides a written determination that an existing or proposed contractual relationship is an insufficient basis to establish liability under this section;

(iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or threatened release of a hazardous or deleterious substance; and

(iv) the owner or operator cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls;

(c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that the following conditions are met:

(i) the person did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substance through any act or omission;

(ii) the person uses or allows the use of the real property for residential purposes. This exclusion does not apply to any person who acquires or develops real property for commercial use or any use other than residential use.

(iii) at the time the person purchased or occupied the real property, there were no visible indications of contamination on the surface of the real property;

(iv) the person cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls; and

(v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or threatened release of a hazardous or deleterious substance.

(8) A person is liable under this section if the department provides substantial credible evidence that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

(9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701(15)(b) because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other

right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in

lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection (11).

(11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to a person

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holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

(c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

{ Internal References to 75-10-715:

75-10-701 x	75-10-701x	75-10-702x	75-10-704x
75-10-704x	75-10-704x	75-10-704x	75-10-711x
75-10-711x	75-10-711x	75-10-711x	75-10-711x
75-10-711x	75-10-711 x	75-10-711x	75-10-712x
75-10-714x	75-10-714x	75-10-718x	75-10-718x
75-10-718x	75-10-719x	75-10-719x	75-10-719x
75-10-719x	75-10-719x	75-10-720x	75-10-722x
75-10-722x	75-10-722x	75-10-722x	75-10-722 x
75-10-724x	75-10-724x	75-10-726x	75-10-726x
75-10-736x	75-10-736x	75-10-744x	75-10-744x
75-10-745x	75-10-745x	75-10-745x	75-10-745x
75-10-745x	75-10-745x	75-10-745x	75-10-745x
75-10-745x	75-10-745x	75-10-745x	75-10-745x
75-10-745x	75-10-745x	75-10-745x	75-10-745x
75-10-745x	75-10-745x	75-10-745x	75-10-745x
75-10-746x	75-10-747x	75-10-749x	75-10-749x
75-10-750 x	75-10-750x	75-10-752x	75-10-752x }

Section 89. Section 75-10-720, MCA, is amended to read:

"75-10-720. Condemnation -- creation of state lien. (1)

Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, ~~parts 1 through 3~~.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the property that belong to the person.

(3) The lien imposed by this section arises at the time notice incorporating a description of the property subject to the remedial action and an identification of the amount of costs, penalties, and natural resource damages is filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the liable person.

(4) The costs, penalties, and natural resource damages constituting the lien may be recovered in an action in the district court for the district in which the property is located or in which the remedial action is occurring or has occurred. This section does not affect the right of the state to bring an

action against a person to recover all costs, penalties, and natural resource damages for which that person is liable under this part or any other provision of state or federal law.

(5) The lien must continue until the liability for the costs and damages incurred as a result of the release of a hazardous or deleterious substance is satisfied.

(6) If the department expends money from the fund for orphan share remedial action costs at a facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for the unrecovered costs. The lien:

(a) may not exceed the increase in fair market value of the property attributable to the unfunded portion of the remedial action at the time of a subsequent sale or other disposition of the property;

(b) arises at the time costs are first incurred by the department with respect to a remedial action at the facility;

(c) must be filed according to subsection (3); and

(d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs incurred at the facility.

(7) Payment of any liens under this section must be deposited in one of the two accounts from which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share fund established in 75-10-743."

{Internal References to 75-10-720: None.}

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Section 90. Section 75-15-123, MCA, is amended to read:

"75-15-123. Acquisition of outdoor advertising rights -- compensation. (1) The department may acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and ~~which~~ that by virtue of 75-15-111(1) is nonconforming. Eminent domain ~~shall~~ must be exercised in accordance with ~~the laws of the state~~ Title 70, chapter 30.

(2) Just compensation ~~shall~~ must be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found to be in violation of 75-15-112 or 75-15-132 without payment of compensation.

(3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under 23 U.S.C. 131(g), with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state."

{Internal References to 75-15-123: None.}

Section 91. Section 75-15-223, MCA, is amended to read:

"75-15-223. Authority to acquire interest in land for

screening and removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills. (1) When the department of transportation determines that it is in the best interests of the state, it may acquire ~~such lands~~ land or interests in ~~lands as~~ land that may be necessary to provide adequate screening for junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills.

(2) When the department of transportation determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange, or condemnation ~~such~~ interests in ~~lands as~~ land that may be necessary to secure the relocation, removal, or disposal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, or sanitary landfills ~~which~~ that were either lawfully:

(a) in existence on October 22, 1965;

(b) along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) established on or after January 1, 1968.

(3) The department of transportation shall pay just compensation to the owner for the relocation, removal, or disposal of any ~~such~~ facility. Condemnation must be exercised pursuant to Title 60, chapter 4, and Title 70, chapter 30.

(4) Any new site chosen by the department of transportation pursuant to subsection (2) for the relocation of a garbage dump

or sanitary landfill must be approvable as the site of a solid waste management system pursuant to Title 75, chapter 10, part 2, and the rules promulgated under authority of that part."

{Internal References to 75-15-223: None.}

Section 92. Section 76-5-1108, MCA, is amended to read:

"76-5-1108. Acquisition of property. (1) Cities, towns, and counties may acquire by gift, purchase, or condemnation ~~and appropriation pursuant to Title 70, chapter 30,~~ private property within the limits of the project, ~~including the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use, as that~~ may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial, ~~which~~ Watercourses may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part. Property rights that may be acquired include the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use.

(2) All applicable provisions of ~~the laws of Montana relating to the condemnation of lands for public purposes shall Title 70, chapter 30,~~ apply to ~~the provisions thereof insofar as to the condemnation of property under this section applicable.~~"

{Internal References to 76-5-1108: None.}

Section 93. Section 76-5-1111, MCA, is amended to read:

"76-5-1111. Apportionment of costs. (1) The cost of all right-of-way acquired by purchase or condemnation pursuant to Title 70, chapter 30, together with any other property rights ~~which that~~ may be required in furtherance of such projects under this part, may be borne by the city, town, or county.

(2) The work of actual construction and the cost ~~thereof~~ of construction may be borne by the federal government."

{Internal References to 76-5-1111: None.}

Section 94. Section 76-6-105, MCA, is amended to read:

"76-6-105. Construction of chapter. (1) To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

(2) This chapter may not be construed to imply that any easement, covenant, condition, or restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain pursuant to Title 70, chapter 30, or otherwise and to use land for public purposes."

{Internal References to 76-6-105: None.}

Section 95. Section 76-12-108, MCA, is amended to read:

"76-12-108. Acquisition of lands. Subject to the limits of available appropriations, the board is authorized to acquire

interests ~~to lands~~ in land by any lawful means for the purpose of designating natural areas, ~~provided that the~~ The board shall may exercise the power of eminent domain, provided for in Title 70, chapter 30, only in specific instances ~~where~~ authorized by the legislature."

{Internal References to 76-12-108: None.}

Section 96. Section 76-12-110, MCA, is amended to read:

"76-12-110. Restriction on condemnation or development of natural areas. Natural areas acquired or designated in accordance with the provisions of this part are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the ~~condemnation or~~ development or condemnation, as provided in Title 70, chapter 30."

{Internal References to 76-12-110: None.}

Section 97. Section 82-2-221, MCA, is amended to read:

"82-2-221. Eminent domain for open-pit mining -- purchase of property required. (1)(a) Whenever Subject to subsection (1)(b), when the right of eminent domain is exercised pursuant to Title 70, chapter 30, to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals owned by the ~~plaintiff~~ condemnor, the decree ~~shall~~ must be granted on the condition that the ~~plaintiff~~ condemnor protects the public in the immediate area by agreeing to purchase all property within 300 yards of the surface tract condemned,

including vacant lots~~7~~.

(b) provided In order to fall within the protection provided by subsection (1)(a), the owner ~~or owners thereof~~ of land within 300 yards of the surface tract condemned shall serve upon the ~~plaintiff~~ condemnor and file with the court a written offer stating the amount asked for ~~such~~ the property within 30 days from the entry of the court order appointing commissioners in ~~said the~~ eminent domain proceeding. ~~In the event the plaintiff~~

(2) If the ~~condemnor~~ and the ~~an~~ owner ~~or owners~~ are unable to agree upon the compensation to be paid for ~~such~~ the property, the court, upon petition of either party, may proceed to determine the compensation to be paid for ~~such~~ property in the manner prescribed in Title 70, chapters 30 and 31, ~~as amended,~~ for ascertaining the value of property taken through the exercise of the right of eminent domain."

{Internal References to 82-2-221:
82-2-222 x}

Section 98. Section 82-2-222, MCA, is amended to read:

"82-2-222. Construction of alternate facilities. ~~Whenever it is sought~~ If a mineral owner seeks to condemn streets, roads, alleys, or highways pursuant to Title 70, chapter 30, for the purposes stated in 82-2-221 ~~hereof~~, there ~~shall~~ must also be attached to the complaint for condemnation a plat or plats showing the alternate facilities to be proposed and paid for by the ~~plaintiff, condemnor~~ and the The court, in its final order of condemnation, may order the ~~plaintiff~~ condemnor to construct

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~~such~~ reasonable and adequate alternate facilities ~~as~~ that it ~~deems~~ considers appropriate under the circumstances."

{Internal References to 82-2-222: None.}

Section 99. Section 82-2-224, MCA, is amended to read:

"82-2-224. Notice of condemnation -- filing of plat. Any party seeking to condemn property for open-pit mining purposes pursuant to Title 70, chapter 30, shall serve written notice ~~in writing~~ on all owners and purchasers under contracts for deed of property within 300 yards of the surface tract sought to be condemned or ~~in lieu thereof~~ shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder~~7.~~ ~~and the~~ The filing of ~~said the~~ plat ~~shall constitute~~ constitutes notice to the owner or owners not personally served with written notice ~~as herein provided.~~"

{Internal References to 82-2-224: None.}

Section 100. Section 82-10-303, MCA, is amended to read:

"82-10-303. Use of eminent domain to acquire underground reservoirs. (1) A natural gas public utility may acquire~~7~~ through the exercise of the right of eminent domain as provided in Title 70, chapter 30, and this part, an underground reservoir for its use for the underground storage of natural gas~~7.~~ ~~an underground reservoir which~~ The right of eminent domain may be exercised only if the board finds that the reservoir is suitable and its taking is in the public interest for the underground storage of natural gas7. ~~and in~~ In connection with the underground reservoir, the

utility may acquire ~~such~~ other interests in property ~~as~~ that may be required to adequately ~~to~~ maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) ~~No sand~~ Sand, a formation, or a stratum ~~which~~ that is producing, ~~or~~ that has produced, ~~or~~ which that is capable of producing oil is not subject to ~~appropriation~~ taking under this section.

(b) ~~No~~ A gas-bearing sand, formation, or stratum is not subject to ~~appropriation~~ taking under this section, unless the recoverable volumes of native gas ~~therein~~ in the interest sought to be taken have all been produced or unless the sand, formation, or stratum has a greater value or utility as an underground reservoir for the purpose of ~~insuring~~ ensuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas or for the conservation of natural gas than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas ~~therein~~ in the sand, formation, or stratum. Gas, sand, formation, or stratum may not be acquired under this part when the gas in the underground reservoir is being used for the secondary recovery of oil, unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas

being used in the secondary operations, ~~not exceeding, however~~
However, the amount of gas furnished may not exceed the quantity
of the appropriated gas that remained recoverable from the sand,
formation, or stratum at the time of its ~~acquisition~~, taking if
the operator was at that time entitled to ~~the whole thereof~~ all
of the gas or if ~~the operator was at that time~~ entitled to less
than all of the ~~whole thereof~~ gas, then an amount not to exceed
the quantity ~~thereof~~ of gas to which the operator was ~~then~~
entitled.

(c) Only the area of the underground sand, formation, or
stratum ~~as that~~ that may reasonably be expected to be penetrated by
gas displaced or injected into the underground ~~gas storage~~
reservoir may be ~~appropriated~~ taken.

(d) ~~No rights~~ Rights or interests in existing underground
~~gas~~ reservoirs being used for the injection, storage, or
withdrawal of natural gas owned or operated by a natural gas
public utility other than the natural gas public utility seeking
to acquire the ~~same~~ reservoir are not subject to appropriation.

(2) The exercise of the right of eminent domain granted by
this section ~~shall be~~ is without prejudice to the rights of the
owner of the ~~lands~~ land or of other rights or interests ~~therein~~
in the land to drill or bore into or through the underground
reservoir ~~so appropriated~~ in a manner that complies with orders
and rules of the board issued for the purpose of protecting the
underground reservoir against pollution and against the escape of
natural gas ~~therefrom~~ and ~~shall be~~ is without prejudice to the
rights of the owner of the ~~lands~~ land or other rights or

interests ~~therein~~ in the land as to all other uses ~~thereof~~ of the land. The additional cost of complying with those rules or orders in order to protect the storage reservoir ~~shall~~ must be paid by the natural gas public utility."

{Internal References to 82-10-303: None.}

Section 101. Section 82-10-304, MCA, is amended to read:

"82-10-304. Certificate of board required prior to use of eminent domain. (1) A natural gas public utility desiring to exercise the right of eminent domain pursuant to Title 70, chapter 30, and this chapter ~~as to any property~~ for taking property to use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain ~~from the board~~ a certificate from the board. The certificate must contain ~~setting out~~ the following findings of the board:

(a) that the underground sand, stratum, or formation sought to be ~~acquired~~ taken is suitable for an underground reservoir for the storage of natural gas and that its use for ~~such purposes~~ that purpose is in the public interest;

(b) the amount of native gas, if any, remaining ~~therein~~ in the reservoir and the portion ~~thereof~~ of gas recoverable; and

(c) that the applicant has in good faith sought to acquire the rights sought under this part.

(2) The board may not issue the certificate until after a public hearing is ~~had~~ held on the application, pursuant to notice given to all persons known to have an interest in the property

proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action."

{ Internal References to 82-10-304:
70-30-203x }

Section 102. Section 82-10-305, MCA, is amended to read:

"82-10-305. Proceedings. ~~Having first obtained~~ After obtaining a certificate from the board, a natural gas public utility desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall ~~do so in the manner~~ proceed as provided in this section. The natural gas public utility shall present to the district court of the county ~~wherein~~ in which the land is situated a complaint setting forth the purpose for which the property is sought to be ~~acquired~~ taken, a description of the property sought to be ~~appropriated~~ taken, and the names of the owners ~~thereof~~ of the property as shown by the records of the county. The ~~plaintiff~~ utility shall file the certificate of the board as a part of its complaint, and ~~no~~ an order by the court granting the complaint ~~shall~~ may not be entered without the certificate being filed ~~therewith~~ with the complaint. Subsequent proceedings ~~shall~~ must follow the procedure provided by ~~law in~~ the exercise of the rights of eminent domain, Title 70, ~~chapters~~ chapter 30 ~~and 31~~."

{ Internal References to 82-10-305: None. }

Section 103. Section 85-1-204, MCA, is amended to read:

"85-1-204. Department powers over state water. (1) The department may sell, lease, and otherwise dispose of water impounded under this chapter. The water may be sold for the purpose of irrigation, development of power, watering of stock, or other purposes. The department may also lease water under the state water leasing program established under the provisions of 85-2-141. To the extent that it may be necessary to carry out this chapter and subject to compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not ~~vested in~~ appropriated for private ownership, use. ~~and it~~ The department shall take the necessary actions to appropriate and conserve the water for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the water of this state that it may acquire by condemnation pursuant to Title 70, chapter 30, or by purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of water, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction that purport to adjudicate the water of a stream or its tributaries. A fair, reasonable, and equitable reconciliation must be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not

adjudicated by a court.

(4) The department may hold hearings relating to the rights of respective claimants after first giving the notice that it considers appropriate. The department shall make findings of the date and quantity of appropriation and use of all claimants that the department recognizes and observes in diverting the water that the department ~~owns~~ is appropriated. The department may measure and distribute the water to the ~~owner~~ holder of the recognized appropriation right under agreed-upon terms.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the water ~~owned~~ appropriated or administered under agreement with respective ~~owners~~ water right holders. The ~~owner~~ holder of a prior right who contends that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the water of a stream, it may divert or authorize the diversion at a point on the stream or a portion of the stream when it is done without injury to a prior appropriator."

{Internal References to 85-1-204: None.}

Section 104. Section 85-1-209, MCA, is amended to read:

"85-1-209. Acquisition of property by department. (1) The department may acquire by purchase or exchange, upon terms and conditions and in a manner it considers proper, and may acquire by condemnation, in accordance with ~~laws applicable to the condemnation of property for public use~~ Title 70, chapter 30, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned must be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court that has jurisdiction of the suit, action, or proceeding ~~as that~~ may be warranted by law and the facts.

(2) In a condemnation proceeding brought under ~~the powers of eminent domain~~ Title 70, chapter 30, for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be ~~acquired~~ taken, as disclosed by the public records, must be made parties and the court in the action shall partition and distribute the damages awarded, if any, among those persons ~~as their rights appear~~. If there is controversy between ~~them~~ the condemnees, the court may direct the amount of the damage awarded to be paid into court to ~~abide the result of~~ be allocated in further appropriate proceedings either at law or in equity.

(3) Taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the condemnation proceedings ~~in condemnation~~.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects the part of the water rights that the department determines is necessary. Upon the adoption of the order, the water rights are considered a part of each of the works or projects to the extent that the water rights have been apportioned or allocated to the works or projects."

{Internal References to 85-1-209: None.}

Section 105. Section 85-7-1411, MCA, is amended to read:

"85-7-1411. Authority to acquire, construct, maintain, operate, and lease various undertakings. (1) An irrigation district may:

(a) construct, acquire by gift, purchase, or lease, or improve any undertaking, within or outside the irrigation district, and acquire by gift, purchase, or lease land or rights in land or water rights in connection with the undertaking;

(b) operate and maintain or enter into a contract for the operation and maintenance of any undertaking and furnish or enter into a contract for the furnishing of services, facilities, and commodities of the undertaking for its own use and for the use of public and private consumers within or outside the territorial

boundaries of the irrigation district. However, an irrigation district may not furnish or enter into a contract for the furnishing of electrical energy or capacity except to a qualified purchaser under the Public Utility Regulatory Policy Act of 1978.

(c) lease any undertaking to a private or governmental entity.

(2) ~~Nothing in this~~ This section may not be construed to permit an irrigation district to condemn any property owned or controlled by a rural electric cooperative or a utility, whether publicly or privately owned. An irrigation district is expressly prohibited from condemning, pursuant to Title 70, chapter 30, ~~such~~ property owned or controlled by a rural electric cooperative or utility."

{Internal References to 85-7-1411: None.}

Section 106. Section 85-7-1904, MCA, is amended to read:

"85-7-1904. Acquisition of water and waterworks by board.

(1) The board ~~shall have power and authority to~~ may:

(a) appropriate water in the name of the district;

(b) acquire, by purchase, lease, or contract~~7;~~

(i) water and water rights;

(ii) additional ~~waters~~ water and supplies of water; and

(iii) canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation pursuant to Title 70, chapter 30, or other legal means:

(i) ~~lands~~ land and rights in lands for rights-of-way, for

reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances; and

(ii) other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district or subdistrict system of irrigation works.

(2) The board may contract with the owner or owners of canals, reservoirs, dams, and other works purchased and in the course of construction for the completion ~~thereof~~ of the works.

(3) A purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with ~~such~~ the pumping plants, for a price or rental in excess of \$150,000 or 25% of the district's annual operation and maintenance budget, whichever is greater, may not be entered into by the district without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district or, if the purchase, lease, or contract substantially benefits a subdistrict in the district, by a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict. Any splitting or division of a purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this

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section renders the divided or split contract or contracts void."

{ Internal References to 85-7-1904:

85-7-1943 x}

Section 107. Section 85-7-1932, MCA, is amended to read:

"85-7-1932. Noninterference with navigation or water rights. Navigation ~~shall never in anywise~~ may not be impeded by the operation of this chapter, ~~nor shall any~~ A vested interest in or to any mining or agricultural water rights or ditches or in or to any water rights, reservoirs, or dams now used beneficially ~~by the owners or possessors thereof~~ in connection with any mining or agricultural industry or by persons purchasing or renting the use ~~thereof~~ of the interest or in or to any other property ~~now~~ used, directly or indirectly, in carrying on or in promoting the mining or agricultural industry ~~ever~~ may not be affected by or taken under ~~its provisions~~ this chapter, ~~save and~~ except that rights-of-way may be acquired over the ~~same~~ mining or agricultural property or interest. The right of eminent domain, as provided in Title 70, chapter 30, is ~~shall not be~~ otherwise ~~considered abridged~~ affected by the provisions ~~hereof~~ of this section."

{ Internal References to 85-7-1932: None. }

Section 108. Section 85-9-410, MCA, is amended to read:

"85-9-410. Condemnation authorized. The district may exercise the right of eminent domain, ~~in the manner as~~ as provided ~~by the law to take private property for public use, with just~~

~~compensation in Title 70, chapter 30, where~~ when the taking is necessary for the purposes of the district. Water rights ~~as such shall~~ are not be subject to ~~such~~ taking but may be taken as an incident to the condemnation of land to which ~~such~~ the water rights are appurtenant, ~~where~~ when the taking of the land is the principal purpose of the condemnation."

{Internal References to 85-9-410: None.}

Section 109. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries, nursery ponds, or game farms;
- (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, lands or waters

suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and ~~waters~~ water rights acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and ~~waters~~ water rights for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper

with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or ~~waters~~ water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) The department shall convey lands and ~~waters~~ water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(5) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which

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game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

{ *Internal References to 87-1-209:*

23-1-102x 87-1-242x 87-1-303x }

- END -

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LC0163

**** Bill No. ****

Introduced By *****

By Request of the Environmental Quality Council

A Bill for an Act entitled: "An Act clarifying that an easement is the preferred interest to be taken in a condemnation proceeding unless the parties agree that a greater interest should be taken or the condemnor shows by a preponderance of the evidence that taking a greater interest is necessary; providing an exemption for state highway purposes; and amending sections 60-4-102, 70-30-104, and 70-30-206, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-4-102, MCA, is amended to read:

"60-4-102. General power of department to acquire interests in property. Notwithstanding any other provision of law, the department of transportation may acquire by purchase or other lawful manner lands or other real property, excluding oil, gas, and mineral rights, ~~which~~ that it considers reasonably necessary for present or future highway purposes. The department may acquire a fee simple or lesser estate or interest. The provisions of 70-30-104(2) do not apply to the acquisition of a fee simple interest under this section."

{Internal References to 60-4-102: None.}

Section 2. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken.

(1) The following is a classification of the estates and rights in ~~lands~~ land subject to ~~be taken~~ taking for ~~the~~ public use:

~~(1)(a)~~ such estate subject to subsection (2), estates or rights ~~as may be~~ that are necessary, up to and including a fee simple interest, when taken for:

(i) public buildings or grounds; ~~or for~~

(ii) permanent buildings; ~~or for~~

(iii) an outlet for a flow or a place for the deposit of debris or tailings of a mine; ~~or for~~

(iv) the mining and extracting of ores, metals, or minerals when the ~~same~~ ores, metals, or minerals are owned by the ~~plaintiff~~ condemnor but are located beneath or upon the surface of property ~~where~~ for which the title to ~~said~~ the surface vests in others; or

(v) ~~for~~ the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the ~~appropriation~~ taking is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir ~~so appropriated shall~~ taken must be determinable and for all purposes ~~terminate~~ terminates upon abandonment or upon cessation for the period of 1 year of the use for which the ~~same~~ property was ~~appropriated, taken, and thereupon~~ Upon the abandonment or cessation, the ownership of the residue of natural gas ~~therein~~ remaining ~~shall likewise vest~~ in the reservoir vests in the ~~then~~

current owners of ~~such~~ the surface property over the reservoir space.

~~(2)~~(b) ~~such~~ the estate or rights in the surface ~~as~~ property that are necessary for a reservoir or dam and for the permanent flooding that results from the reservoir or dam, up to the edge of the maximum pool of the reservoir;

~~(3)~~(c) an easement, leasehold, or other interest, for ~~so~~ as long as the interest is necessary for the purpose described in the complaint, or fee simple interest when taken for any other use;

~~(4)~~(d) the right of entry upon and occupation of land and the right to take ~~therefrom such~~ from the land any earth, gravel, stones, trees, and timber ~~as~~ that may be necessary for some public use.

(2) Subject to 60-4-102, an easement is presumed to be sufficient for a project for a public use unless the parties agree that a greater interest should be taken or the condemnor shows by a preponderance of the evidence that a greater interest is necessary."

{Internal References to 70-30-104: None.}

Section 3. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) ~~The~~ In a condemnation proceeding, the court ~~has power~~ to may:

- (a) regulate and determine the place and manner of:
 - (i) making the connections and crossings and enjoying the

common uses mentioned in 70-30-103(1)(e); and

(ii) ~~of the~~ occupying ~~of~~ canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) subject to 70-30-104(2), limit the interest in real property sought to be ~~appropriated~~ taken if in the opinion of the court the interest sought is not necessary.

(2) If the court finds and concludes from the evidence presented that the public interest requires the taking of ~~such an~~ interest in real property and that the ~~plaintiff~~ condemnor has met ~~his~~ the burden of proof under 70-30-111, ~~it must forthwith make and the court shall~~ enter a preliminary condemnation order providing that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(3) (a) If the property sought to be ~~appropriated~~ taken is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of ~~it~~ the property for ~~such that~~ use has been proved by ~~plaintiff~~ the condemnor based upon substantial evidence, the order of the court must direct the condemnation commissioners to ~~ascertain and~~ determine the amount to be paid by the ~~plaintiff~~ condemnor to each person for ~~his~~ each person's interest in the property sought to be ~~appropriated~~ taken for use as ~~such an~~ underground natural gas storage reservoir ~~and/or as~~.

(b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the commissioners to determine the annual rental for:

(i) the use of ~~such~~ the underground natural gas storage reservoir;

(ii) ~~and for~~ the use of so much of the surface as is required in the operation of the ~~underground gas storage~~ reservoir and for the use in connection with the creation, operation, and maintenance ~~thereof~~ of the reservoir; and

(iii) ~~for~~ all the native gas contained in ~~said~~ the reservoir ~~as compensation and damages by reason of the appropriation of such property~~. However, the amount to be paid for ~~such~~ the native gas ~~and all thereof shall be no~~ may not be less than the market value of ~~such~~ the gas.

(4) The court shall appoint three persons, qualified and recommended as experts ~~and recommended as such~~ by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by ~~plaintiff~~ the condemnor to each person for ~~his~~ each person's interest in the property sought to be ~~appropriated, taken, and~~ the The fees and expenses of ~~such persons shall be~~ the experts are chargeable as costs of the proceedings to be paid by the ~~plaintiff~~ condemnor.

~~(4)~~(5) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including discovery and trial. The court shall give ~~such~~ the proceedings expeditious and priority consideration. The preliminary condemnation proceeding

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~~shall~~ must be tried by the court sitting without a jury."

{ Internal References to 70-30-206:
70-30-110 x }

- END -

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As of: October 5, 2000 (2:47PM)

LC0164

**** Bill No. ****

Introduced By *****

By Request of the Environmental Quality Council

A Bill for an Act entitled: "An Act allowing the condemnee and condemnor in a condemnation action the opportunity to provide a statement of appropriate damage reduction measures; allowing the court to include appropriate payment for damages in the preliminary condemnation order; allowing for the inclusion of appropriate payment for damages in the final condemnation order; and amending sections 70-30-110, 70-30-203, 70-30-206, and 70-30-309, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be taken -- greatest public good -- least private injury. (1) In all cases ~~where~~ in which land is required for public use, the state or its agents in charge of ~~such~~ the public use may survey and locate the ~~same,~~ land to be used. ~~but it~~ The use must be located in the manner ~~which~~ that will be most compatible with the greatest public good and the least private injury, and the location is subject to the provisions of 70-30-206. The state or its agents in charge of ~~such~~ the public use may, after giving 30 days' written notice to the owners and persons in possession of the

land, enter upon the land and make examination, surveys, and maps thereof, of the land. ~~and such~~ The entry shall does not constitute ~~no~~ a cause of action in favor of the owners of the land except from injuries resulting from negligence, ~~wantonness,~~ or ~~malice~~ intentional acts. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of ~~his~~ the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of ~~such~~ that information furnish written notice to ~~such~~ the listed persons.

(2) Prior to or at the time of rejection of the final written offer as referenced in 70-30-111(4), the condemnee may provide to the condemnor the condemnee's claim of appropriate measures that the condemnee considers necessary to minimize damages to the property directly affected by the project as well as to minimize damages incurred to the remaining parcel of property."

{Internal References to 70-30-110: None.}

Section 2. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. (1) The complaint for condemnation must ~~allege~~ contain:

~~(1)~~(a) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought to be taken, who ~~must be styled~~ is the plaintiff;

~~(2)~~(b) the names of all owners, purchasers under contracts

for deed, mortgagees, and lienholders of record and any other claimants ~~of the property~~ of record of the property sought to be taken, if known, or a statement that they are unknown, who ~~must be styled~~ are the defendants;

~~(3)~~(c) a statement of the right of the plaintiff to take property for public use;

~~(4)~~(d) statements of each of the facts necessary to be found in 70-30-111;

(e) a description of each interest in real property sought to be taken, a statement of whether the property sought to be taken includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed to be taken as well as to any remaining parcel of property.

~~(5)~~(2) ~~if~~ If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show the location, general route, and termini and must be accompanied with a map ~~thereof~~ of the route, so far as the ~~same~~ route is involved in the action or proceeding~~7~~.

~~(6) a description of each interest in real property sought to be taken and whether the same includes the whole or only a~~

~~part of the entire parcel or tract and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.~~

~~(7)(3)~~ (a) ~~if~~ If a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be ~~appropriated~~ taken, in addition to the items listed in subsection (1), the complaint must include a description thereof of the reservoir and of the land in which it the reservoir is alleged to be contained and a description of all other property and rights sought to be ~~appropriated~~ taken for use in connection with the ~~appropriation of the~~ right to store natural gas in and withdraw natural gas from ~~such~~ the reservoir.

(b) In addition, the complaint ~~shall~~ must state facts showing that:

(i) the ~~underground~~ reservoir is ~~one~~ subject to ~~appropriation~~ being taken by the plaintiff;

(ii) ~~also stating that~~ the underground storage of natural gas in the land sought to be ~~appropriated~~ taken is in the public interest;

(iii) ~~that~~ the ~~underground~~ reservoir is suitable and practicable for natural gas storage; and

(iv) ~~that~~ the plaintiff in good faith has been unable to acquire the rights sought to be ~~appropriated hereunder~~ taken; and

(v) a statement that the rights and property sought to be

~~appropriated taken~~ are not prohibited by law, ~~from being taken.~~

~~(c) and in addition, the~~ The complaint must be accompanied by a certificate from the board of oil and gas conservation as ~~set forth provided~~ in 82-10-304."

{ Internal References to 70-30-203:
70-30-206 x }

Section 3. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) ~~The~~ In a condemnation proceeding, the court ~~has power~~ to may:

(a) regulate and determine the place and manner of:

(i) making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e); and

(ii) ~~of the~~ occupying ~~of~~ canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) limit the interest in real property sought to be ~~appropriated taken~~ if in the opinion of the court the interest sought is not necessary.

(2) (a) If the court finds and concludes from the evidence presented that the public interest requires the taking of ~~such an~~ interest in real property and that the ~~plaintiff~~ condemnor has met ~~his the~~ burden of proof under 70-30-111, ~~it must forthwith make and the court shall~~ enter a preliminary condemnation order providing that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(b) In order to comply with the provisions of 70-30-110, the court shall determine, based on the evidence presented, the appropriate payment for damages to the property taken as well as to any remaining parcel of property that may be adversely impacted by the project.

(3) (a) If the property sought to be ~~appropriated~~ taken is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of ~~it~~ the property for ~~such that~~ use has been proved by ~~plaintiff~~ the condemnor based upon substantial evidence, the order of the court ~~shall~~ must direct the condemnation commissioners to ~~ascertain and~~ determine the amount to be paid by the ~~plaintiff~~ condemnor to each person for ~~his~~ each person's interest in the property sought to be ~~appropriated~~ taken for use as ~~such an~~ underground natural gas storage reservoir and/or as.

(b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the commissioners to determine the annual rental for:

(i) the use of ~~such~~ the underground natural gas storage reservoir;

(ii) and for the use of so much of the surface as is required in the operation of the ~~underground gas storage~~ reservoir and for the use in connection with the creation, operation, and maintenance ~~thereof~~ of the reservoir; and

(iii) for all the native gas contained in ~~said~~ the reservoir ~~as compensation and damages by reason of the appropriation of such property~~. However, the amount to be paid for ~~such~~ the native

gas ~~and all thereof shall be no~~ may not be less than the market value of ~~such~~ the gas.

(4) The court shall appoint three persons, qualified and recommended as experts ~~and recommended as such~~ by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by ~~plaintiff~~ the condemnor to each person for ~~his~~ each person's interest in the property sought to be ~~appropriated, taken, and~~ the The fees and expenses of ~~such persons shall be~~ the experts are chargeable as costs of the proceedings to be paid by the ~~plaintiff~~ condemnor.

~~(4)~~(5) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including discovery and trial. The court shall give ~~such~~ the proceedings expeditious and priority consideration. The preliminary condemnation proceeding ~~shall~~ must be tried by the court sitting without a jury."

{Internal References to 70-30-206:
70-30-110 x}

Section 4. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents -- vesting upon filing. (1) When payments have been made and the bond, if appropriate, has been given, ~~if the plaintiff elects to give one,~~ as required by 70-30-307 and 70-30-308, the court ~~must~~

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shall make a final order of condemnation~~7,~~ ~~which~~ The order must describe the property condemned~~,~~ ~~and~~ the purposes of ~~such~~ the condemnation~~7,~~ and any appropriate payment for damages to the property actually taken as well as to any remaining parcel of property that may be adversely affected by the taking.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and ~~thereupon~~ upon filing, the property described ~~therein shall vest~~ in the order vests in the ~~plaintiff~~ condemnor for the purposes ~~therein~~ specified in the order."

{Internal References to 70-30-309: None.}

- END -

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